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14

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 161.

ELLEN KELLEY, APPELLANT,

vs.

ELLEN OWEN, MARGARET KAHOE, AND PHILLIP KELLEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 4, 1867.

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INDEX.

	Original.	Print.
Clerk's certificate	1	1
Bill of complaint	3	1
Summons to answer and return	10	4
Answer of Ellen Kelley	11	4
Answer of James Mulliqueen	12	5
Exceptions to answer of Ellen Kelley	13	5
Decree of sale	15	6
Trustee's bond	18	7
Petition of Ellen Kelley	20	8
Assignment of T. Downey	21	8
Order to credit Ellen Kelley $207	21	9
Report of trustees	22	9
Order to credit James Mulliqueen	23	10
Trustee's report of sale, receipts, &c	24	10
Ratification of sale, nisi	32	14
Final ratification	33	15
Auditor's report and schedules	34	15
Certificate of naturalization of Edward Owen	40	19
Ratification of auditor's report	43	20
Depositions (and interrogatories) Edward Owen	44	21
Depositions (and interrogatories) Ellen Owen	53	24
Depositions (and interrogatories) James Kahoe	55	26
Certificate of naturalization of James Kahoe	65	30

	[Original.	Print
Deposition of Margaret Kahoe	66	30
Exception of Ellen Kelley to certificate of naturalization James Kahoe	76	34
Order of reference to auditor to take further evidence	77	35
Auditor's second report	79	36
Depositions of Ellen Kelley taken before auditor	101	45
Depositions of Margaret Kahoe	103, 118,	46, 53
Depositions of Maurice Mulcare	111	50
Depositions of Mary Mulcare	112	50
Depositions of Patrick Allen	113	51
Depositions of Mary Ann Malone	120, 123,	51
Depositions of James Malone	122	55
Certificate of naturalization of Miles Kelley	124	56
Decree confirming auditor's second report	127	57
Petition of Ellen Kelley to strike out decree of ratification	127	58
Order rescinding decree	129	58
Exceptions of Ellen Kelley to auditor's report	129	59
Affidavit of Margaret Ward	130	59
Affidavit of Ellen Kelley	132	60
Order of reference to auditor	133	60
Auditor's third report	134	61
Statement of W. R. Woodward	137	62
Decree	137	62
Complainant's prayer for appeal	138	62
Decree of general term, and appeal to Supreme Court of United States	140	63

1 In the Supreme Court of the District of Columbia, the 10th day of June, 1867.

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said Court, and that said originals together constitute the record of the proceedings of said Court in a certain cause therein depending and lately decided, entitled Edward Owen *et al. vs.* Ellen Kelley *et al.*, No. 70. Equity. Doc. 7.

In testimony whereof, I have subscribed my name, and caused the seal of the said Supreme Court to be hereunto affixed, the day and year aforesaid.

[L. S.] R. J. MEIGS, *Clerk.*

2

3 To the honorable the judges of the Supreme Court of the District of Columbia, sitting as a Court of Equity:

Humbly complaining, shew unto your honors: Your orators and oratrixes, Edward Owen and Ellen Owen, his wife, of the city of Washington, County of Washington, District of Columbia, and James Kahoe and his wife, Margaret Kahoe, of Covington, county of Kenton, in the State of Kentucky, all citizens of the United States of America, and Philip Kelly, of Paluce, near county of New Ross, Ireland, in the kingdom of Great Britain, that Miles Kelly, late of the county of Washington, District of Columbia, emigrated from Ireland in the kingdom aforesaid, in or about the year and was duly naturalized at the March term of the late Circuit Court of the District of Columbia, on the 8th day of May, 1855, and thereby became a citizen of the United States, according to the act of Congress in such cases made and provided.

Your orators and oratrixes further show unto your honors, that the said Miles Kelly, late of the county and district aforesaid, was in his lifetime, and at the time of his death, seized in fee-simple of

4 certain real estate to him and his heirs, together with the buildings, improvements, rights, privileges, and appurtenances to the same belonging, to wit: all the piece or parcel of ground lying and being in the City of Washington, District of Columbia, known and described on the ground plat or plan of said city, as lot numbered 25, in square numbered 625, purchased by the said Miles Kelly, deceased, on the 20th day of May, A. D. 1853, as will fully appear at large by reference to the deed from Wesley Hall and wife to said Miles Kelly, deceased duly recorded in Liber J. A. S., No. 56, folios 197, et seq. Also to all that piece or parcel of ground known and described upon the ground plan or plat of the aforesaid city as the east half of lot numbered 20, in square numbered 625, agreeably to Cabot's sub-division of said last-mentioned square, as

	[Original.	Print
Deposition of Margaret Kahoe	66	30
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Auditor's second report	79	36
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Auditor's third report	134	61
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In testimony whereof, I have subscribed my name, and caused the seal of the said Supreme Court to be hereunto affixed, the day and year aforesaid.

[L. S.] R. J. MEIGS, *Clerk.*

2

3 To the honorable the judges of the Supreme Court of the District of Columbia, sitting as a Court of Equity:

Humbly complaining, shew unto your honors: Your orators and oratrixes, Edward Owen and Ellen Owen, his wife, of the city of Washington, County of Washington, District of Columbia, and James Kahoe and his wife, Margaret Kahoe, of Covington, county of Kenton, in the State of Kentucky, all citizens of the United States of America, and Philip Kelly, of Paluce, near county of New Ross, Ireland, in the kingdom of Great Britain, that Miles Kelly, late of the county of Washington, District of Columbia, emigrated from Ireland in the kingdom aforesaid, in or about the year and was duly naturalized at the March term of the late Circuit Court of the District of Columbia, on the 8th day of May, 1855, and thereby became a citizen of the United States, according to the act of Congress in such cases made and provided.

Your orators and oratrixes further show unto your honors, that the said Miles Kelly, late of the county and district aforesaid, was in his lifetime, and at the time of his death, seized in fee-simple of

4 certain real estate to him and his heirs, together with the buildings, improvements, rights, privileges, and appurtenances to the same belonging, to wit: all the piece or parcel of ground lying and being in the City of Washington, District of Columbia, known and described on the ground plat or plan of said city, as lot numbered 25, in square numbered 625, purchased by the said Miles Kelly, deceased, on the 20th day of May, A. D. 1853, as will fully appear at large by reference to the deed from Wesley Hall and wife to said Miles Kelly, deceased duly recorded in Liber J. A. S., No. 56, folios 197, et seq. Also to all that piece or parcel of ground known and described upon the ground plan or plat of the aforesaid city as the east half of lot numbered 20, in square numbered 625, agreeably to Cabot's sub-division of said last-mentioned square, as

will fully and at large appear by reference to the deed from Michael Maloney and wife to said Miles Kelly, deceased, dated the 20th day of December, A. D. 1855, and duly recorded in Liber J. A. S., No. 104, folios 480, et seq. Also all that piece or parcel of ground known, and designated in the ground plan or plat of the aforesaid city as lot numbered one, (1,) in square numbered 677, as will fully appear by reference to the deed from the Corporation of Washington, District of Columbia, to the said Miles Kelly, deceased, dated the 21st day of August, 1858, and duly recorded in Liber J. A. S., No. 154, folios 358 et seq. Also to one undivided moiety of certain pieces or parcels of ground known and described on the ground plan or plat of the aforesaid city, as lots numbered 3, 4, 5, 6, 7, and 8, in square numbered 776, as will fully and at large appear by reference to the deed from James Reidy, and wife to Miles Kelly and James Mulliqueen, as tenants in common and not as joint tenants, the said deed bearing date the 29th July, 1858, being duly recorded in Liber J. A. S., No. 158, folios No. 45 et seq. All of the said deeds being duly recorded as aforesaid in the land records of the county of Washington, District of Columbia, which your orators and oratrixes pray leave to bring into your honorable court, if need may be, and refer to the same. Your orators and oratrixes further shew unto your honors, that the other undivided moiety of the said pieces or parcels of ground, to wit, of lots 3, 4, 5, 6, 7, and 8, on square 776, aforesaid, is held and belongs to James Mulliqueen, whom your orators and oratrixes pray may be made a party defendant to this their bill of complaint.

6 Your orators and oratrixes further shew unto your honors, that said Miles Kelly, deceased, being so seized, as aforesaid, of the aforesaid described pieces or parcels of ground did, on or about the day of , A. D. 1862, at the county and district aforesaid, depart this life without leaving any child or children surviving him, but leaving Ellen Kelly (whom your orators and oratrixes pray may be made party defendant to this their bill of complaint,) his widow, and your orator, Philip Kelly, and your oratrixes Ellen Owen, wife of said Edward Owen, and Margaret Kahoe, wife of said James Kahoe, who are sisters and brother of the said Miles Kelly, deceased, his only heirs and co-heiresses at law or next of kin surviving him.

And your orators and oratrixses further show unto your honors that upon the death of the said Miles Kelly, (their brother,) the said pieces or parcels of ground and premises descended upon, and came to your orators and oratrixses, as such heirs and co-heiresses, subject nevertheless to the dower interest of said defendant, Ellen Kelly, and the interest aforesaid of the said James Mulliqueen.

7 Your orators and oratrixses further show unto your honors that your orators and oratrixses have frequently applied unto and requested the said defendants to join and concur with your orators and oratrixses in making a fair, just, and true partition of the said pieces or parcels of ground and premises between them, according to their respectives shares and proportions, so that the same might be held and enjoyed in severalty between them, according to

their respective interest. And your orator and oratrixses will hoped that the said defendants would have complied with such their reasonable requests, as in justice and equity it ought to have been. But now, so it is, may it please your honors, the said defendants, combining and confederating with divers persons at present unknown to your orators and oratrixes, whoses names, when dicovered, your orator and oratrixes prays they may be at liberty to insist herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orators and oratrixses in the premises; and they, the said defendants, absolutely refuse to comply with such requests, and they, at times, pretend that it will not be to the benefit or advantage of either of them to make actual partition
8 thereof, and that the same cannot be made.

Whereas yours orators and oratrixses charge that, and so the truth is, that a fair, just, and equal partition of the said hereinbefore-described real estate is susceptible of partition, and that the said partition will tend greatly to the benefit and advantage of your orators and oratrixses.

And the said defendants and your orators and oratrixses further charge, that the title, deeds, and evidences, and writings relating to the said estate are in the possession of said defendants, and that the same ought to be brought unto your honorable court for the benefit of your orators and oratrixses; all of which actings, doings, pretences, and refusals, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators and oratrixses in the premises. In tender consideration whereof, and forasmuch as your orators and oratrixses can have only adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable, in the end therefore that the said defendants and their confederates, when discovered, may, upon their several and respective oaths, to the best of their several and respective knowledge, rememberance, information, and belief, full and
9 true, direct and perfect answers make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they, and every of them, distinctly interrogated thereto, and that a decree may be passed for a partition of the aforesaid real estate amongst the parties aforesaid, according to their respective shares and proportions, or, in case partition thereof cannot be effected, then that the same may be sold under the direction of your honorable court, and the proceeds thereof distributed amongst the said parties in proportion to their respective interests; and further, that your orators and oratrixses may have such other and further relief as to your honors may seem right and proper.

May it please your honors to grant unto your orators and oratrixses a commission to five discreet, sensible men, who shall well and truly, and without partiality or prejudice, adjudge and determine whether the estate will admit of being divided without injury and loss to all parties, and ascertain the value of such estate; and may it please your honors to grant unto your orators and oratrixses

the United States writ of subpœna to be directed to all said defendants, commanding them to appear in your honorable court, and then and there full and true answers make to all and singular the premises, and further to stand and perform and abide such further order, direction, and decree therein as to your honors shall seem meet; and your orators and oratrixses will ever pray.

WM. JNO. MILLER,
Solicitor for Complainants.

Summons to answer.—Issued Oct. 1st, '63.

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to summon Ellen Kelly and James Mulliqueen, if they shall be found in the county of Washington, that they be and appear in the Supreme Court of the District of Columbia, at rules, to be held for the county of Washington, at the city of Washington, on the first Monday of November next, to answer to bill of complaint of Edward and Ellen Owen, James and Margaret Kahoe, and Philip Kelly, filed in court here against her. Hereof fail not at your peril, and have you then and there this precept.

Witness the Hon. David. K. Cartter, chief justice of the said court.

Issued the 1st day of October, 1863.

[SEAL.] R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS, JR, *D. C.*

Memo.—The defendants are the enter their appearance in this suit in the clerk's office on or before the 1st Monday of November, 1863, otherwise the bill may be taken for confessed.

Marshal's return.—Oct. 10th, 1863.

Sum'd.

W. H. LAMON, *Marshal.*

I acknowledge service of a copy of this summons, Oct. 21st, 1863.
R. J. BRENT,
For E. KELLY.

Answer of Ellen Kelly.—Filed Oct. 24, 1863.

The separate answer of Ellen Kelly to the bill of complaint filed in this honorable court by Edward and Ellen Owen and others.

This respondent admits that Miles Kelly died seized and possessed of certain real estate mentioned in said bill of complaint; that the said Miles Kelly died intestate and without surviving issue, leaving this

respondent his surviving widow. Your respondent sheweth that said real estate is unimproved, and a division of the same among all parties interested is impossible without great loss and injury; that the said property could now be sold entire at high and advantageous prices, as there is a great demand for property located as the
12 said property is. Wherefore your respondent humbly prays that said property may be immediately sold by trustees appointed by your honorable court and the proceeds brought into court to be distributed among the parties according to their respective interests and without any prejudice in the premises; and as in duty she will ever pray.

R. J. BRENT,
For Respondent.

Received without oath, but subject to exceptions.
WM. J. MILLER,
Sol. for Compl'ts.

Answer of Jas. Mulliqueen.—Fled Nov. 3, 1863.

OWENS *& al*
vs.
KELLY *& al.* } In equity.

The answer of James Mulliqueen to the bill of complaint of the complainants in the above cause.

This defendant admits the allegation contained in the said bill that he is the owner of one undivided half of the portion of ground mentioned in the said proceedings, and that he is willing that his said interest in said square should be sold by a decree of your honorable court as prayed for by complainant.

JAS. MULIQUEEN.

13 Sworn to in open court this 3rd day of Nov., 1863.
R. J. MEIGS, *Cl'k.*

Exceptions to answer of Ellen Kelly.—Filed Dec. 1, 1863.

EDWARD OWEN, ELLEN OWEN, JAMES KAHOE, & Margaret Kahoe and Philip Kelly
vs.
ELLEN KELLY, WIDOW OF MILES KELLY, AND JAMES MULIQUEEN. } In equity. No. 70.

Exceptions taken by said complainant to the insufficient answer of the defendant, Ellen Kelly, to the said complainants' bill of complaint.

1st. For that the said defendant, Ellen Kelly, has not, to the best and utmost of her knowledge, remembrance, and belief, answered and set forth whether the said Ellen Owen, wife of the said Edward Owen, Margaret Kahoe, wife of the said James Kahoe, and Philip Kelly, the above complainants in said bill mentioned, are or are not

the sisters and brother of the said Miles Kelly, deceased, and the only heirs and co-heiresses or next of kin of the said Miles Kelly, deceased, and further as heir and co-heiresses are entitled
14 to a partition of the said estate mentioned in the said complainants' bill of complaint, or, in case the said real estate should be sold, a distributive share of the proceeds arising form the sale thereof.

2nd. For the said defendant. Ellen aforesaid, has not in her answer, in manner aforesaid, answered and set forth whether the said Edward Owen, Ellen Owen, James Kahoe, and Margaret Kahoe are or are not citizens of the United States.

3rd. For that said defendant, Ellen Kelly, has not in manner as aforesaid in her answer set forth whether she has or has not in her possession the title deeds or other evidence in writing relative to the real estate mentioned in the said bill of complaint, nor has she produced the same in your hon. court.

In all which particulars the said complainant excepts to the said answer of the said defendant, Ellen Kelly, widow of the said Miles Kelly, as evasive, imperfect and insufficient, and humbly prays that the said defendent, Ellen, may be compelled to put in a full and sufficient answer thereto.

WM. J. MILLER,
Solicitor for Comp'ts.

15 *Decree of sale.—Filed Dec.* 10, '63.

EDWARD OWEN, ELLEN OWEN, JAMES KAHOE, Margaret Kahoe, Philip Kelley,
vs.
ELLEN KELLY, JAMES MULIQUEEN. } Equity. No. 70.

The above cause being submitted by the solicitors of the respective parties in the above cause upon the bill and answers, subject to the exceptions taken by solicitor for the complainants to the answer of Ellen Kelly, one of the defendants, and the same ware read and considered. It is, therefore, this tenth day of December, A. D. 1863, by the authority of this court, at special term, and with the consent of the respective parties in the above cause, by and through their and each of their solicitors, ordered, adjudged, and decreed that the real estate mentioned in the bill of complaint, and of which Miles Kelly died seized and possessed, be sold by the trustees hereinafter named, and that the proceeds of such sale be brought into court for distribution among the said parties according to their respective interests in the proceeds of said sale, and to stand in place and stead of
16 the said real estate. And further it is ordered, adjudged, and decreed, that no prejudice shall result to the claims of any of the parties to the said proceeds by reason of the passing of this decree.

It is further ordered, adjudged, and decreed that John F. Ennis and William J. Miller be, and they are hereby, appointed trustees to make such sale, and the course and manner of their proceedings shall

be as follows: They shall first file in the clerk's office of this court a bond to the United States of America, executed by them and each of them, with two sureties, to be approved by the court or one of its judges, in the penalty of five thousand dollars, conditioned for the faithful performance of the trust reposed in them by this decree, or which shall hereafter be reposed in them by any future order or decree in the premises. They then shall proceed to make sale of the said property mentioned in said bill of complaint, having first given at least two weeks previous notice inserted in some newspaper printed in the city of Washington, District of Columbia, and such other papers as to them may seem best to the interest of all parties interested in this decree, of the time, place, manner and terms of sale, which
17 terms shall be as follows: The purchase money to be paid, one-third cash, and the balance to be paid in equal installments in six and twelve months from the day of sale, the said balance to bear interest from the day of sale, and the payments of said balance and interest to be secured by the bonds of the said purchaser or purchasers, with a surety or sureties to be approved by the said trustees; and as soon as may be convenient after any such sale or sales the said trustees shall return to this court a full and particular account of the same, with an affidavit of the truth thereof, and of the fairness of such sale or sales annexed; and on the ratification of such sale or sales by the court, and on the payment of the whole of the purchase money and interest the said trustees by good and sufficient deeds, to be executed and acknowledged agreeably to law, shall convey to the purchaser or purchasers of said property and his, her, or their heirs, the property to him, her, or them sold free, clear, and discharged of all claim of the parties to this cause and of any person or persons claiming by, from, or under them. And the said trustees shall bring into this court the money arising on such sale or sales and the
18 bonds or notes which may be taken for the same to be disposed of under the direction of this court, after deducting therefrom the costs of this suit, and such commission to the said trustees as to the court shall think right and proper, on consideration of the skill, attention and fidelity wherewith they shall appear to have discharged their trust.

By order of the court.

Trustee's bond.—Filed Dec. 24, '63.

Know all men by these presents that we, John F. Ennis, William Jno. Miller, Edward Owen, and William E. Spalding, of the city of Washington, District of Columbia, are held and firmly bound unto the United States, its certain attorney or assigns, in the full and just sum of five thousand ($5000) dollars current money of the United States of America, to be paid to the said United States, or its certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 23rd day of December, A. D. 1863.

Whereas by a decree of the Supreme Court of the District of Columbia, sitting as a court of equity at special term, bearing date
19 on the 10th day of December, A. D. 1863, and passed in a cause in the said court, wherein Edward Owen and Ellen Owen, James Kahoe, Margaret Kahoe and Philip Kelly, are complainants, and Ellen Kelly, widow of Miles Kelly, and James Mulliqueen, are defendants, the above bound, John F. Ennis and William J. Miller, have been appointed trustees to make sale of certain real estate in the proceedings in said cause mentioned.

Now, the condition of the above obligation is such, that if the above bound, John F. Ennis and William J. Miller, do and shall, well and faithfully, perform the trust reposed in them by the said decree, or that may be reposed in them by any future order or decree in the premises, [by any future order or decree in the premises,] then the above obligation to be void, otherwise to remain in full force and value in law.

[SEAL.] JOHN F. ENNIS.
[SEAL.] WM. JNO. MILLER.
[SEAL.] E. OWEN.
[SEAL.] WM. E. SPALDING.

Signed, sealed, and delivered in the presence of—
H. H. HAZARD.

Witness to signature of Miller & Owens.
FRED. H. NORTON.

This bond approved:

ANDREW WYLIE.

20 *Petition of Mrs. Ellen Kelly. Filed February* 24, 1864.

To the honorable the judges of the Supreme Court of the District of Columbia, in equity:

The petition of Ellen Kelly respectfully sheweth, that she is the widow of Miles Kelly, who died seized of real estate in this district and without issue; that the said real estate was ordered to be sold by your honorable court by its decree passed in the case of Edward Owens and others *vs.* Ellen Kelly and others, in the proceedings of which cause this petition is filed and prayed to be taken as part thereof. Your petitioner further showeth, that the trustees have sold property belonging to said Kelly to the amount of $2,076, and as widow she is entitled to not less than one-tenth nor more than one-seventh of said amount in the discretion of your honorable court, as and for her dower therein. That your petitioner also became purchaser at said sale to the amount of $1,691, and by the terms thereof she is obliged to pay one-third part in cash and execute her notes for the residue. That your petitioner hath paid in cash $300 to said trustees, and being entitled as aforesaid to at least the sum of $207 out of the proceeds of sale, she prays that an order may be passed directing the trustees to credit her out of the proceeds of sale
21 with the sum of $207 on account of the balance of cash pay-

ment due by her as aforesaid, so that she may not be compelled unnecessarily to pay over to the trustees what she is clearly entitled to on the face of the proceedings in said cause, and as in duty.

ROBERT J. BRENT, *For Petitioner.*

Assignment of Downey. Filed February 24, 1864.

WASHINGTON, *February* 24, 1864.

For value received, I hereby bargain, sell, transfer, and assign unto James Mulqueen, his heirs and assigns, all my right, title, and interest in and to lot No. six (6) in square No. 776, which said lot was purchased by me at a public sale from John F. Ennis and W. J. Miller, trustees in the chancery cause of Owens *& al. vs.* Kelly *& al.*

[SEAL.] TIMOTHY DOWNEY.

Order to Ellen Kelly, $207.

Ordered this 24th day of February, A. D. 1864, that the trustees in the within-entitled cause, credit the petitioner, Ellen Kelly, with the sum of $207 on her cash payment due for purchase money as prayed in the within petition, unless cause to the contrary be shown by the said trustees on or before the 27th day of February
22 instant, provided a copy of this order be served on said trustees before the 25th instant. And it is further ordered that such payment be credited, without prejudice to any claim which the said Ellen Kelly may have as widow aforesaid, over and above her dower right in said proceeds of sale, as shown by her answer to said bill of complaint. Ordered.

D. K. CARTTER, *Chief Justice.*

Service acknowledged this 23d day of February, 1864.

JOHN F. ENNIS,
WM. JNO. MILLER,
Trustees.

Report of Trustees. Filed March 3, 1864.

OWENS *& al.*
vs. } No. 70. Equity.
KELLY *& al.*

To the hon. the judges of the Supreme Court of the District of Columbia, sitting in equity :

The trustees in the above cause respectfully report that James Muliqueen is the owner of one undivided moiety of the following lots of ground, which, with other lots, have been sold by the undersigned by a decree of your honorable court passed in the said cause, viz :

Lots numbered 3, 4, 5, 6, 7, and 8, in square numbered 776.
23 Said Muliqueen became the purchaser of lot No. 6 in said square, at and for the sum of four hundred and ten (410) dol-

lars. His share of the purchase money arising from the sale of the other lots is more than double this amount.

The undersigned ask that they may be allowed to credit the said Muliqueen with the said sum of four hundred and ten dollars on account of his purchase of the said lot.

The undersigned beg leave also to report that nearly all the purchasers at said sale are willing to pay the whole of their purchase-money in cash; and they therefore ask that an order may be passed allowing them to receive from the said purchasers the whole of the said purchase-money in cash as aforesaid.

JOHN F. ENNIS,
WM. JNO. MILLER,
Trustees.

Order of Court. Filed March 3, 1864.

It is this 3d day of March, 1864, ordered by the court, that the trustees in the within-entitled cause credit the said James Muliqueen with the sum of four hundred and ten dollars, on account of his purchase, as stated in the foregoing report. It appearing to the
24 court on the report of the said trustees that the interest of the said Muliqueen in the purchase-money of certain lots sold by the said trustees, is for a much larger amount, that due from him to said trustees on account of said purchase.

And it is hereby further ordered, that said trustees are hereby authorized and empowered to receive the whole of the said purchase money from such of the said purchasers as may be willing to pay the same in cash. By order of the court.

We consent to above order.

R. J. BRENT,
For Ellen Kelly.
WM. JNO. MILLER,
For E. Owen et. al.
JOHN F. ENNIS,
For Muliqueen.

Trustees' report of sale. Filed May 26, 1864.

OWENS *vs.* KELLY. } No. 70. In equity.

The undersigned trustees beg leave respectfully to report, that in pursuance of the decree passed by your honors in the above cause, the property mentioned in the advertisements hereto annexed was advertized in the National Intelligencer of this city for the space of two weeks, as will appear by reference to the certificate
25 hereto annexed; that at the end of the period, viz., on the 6th day of February and the 18th of April, 1864, respectively, at 12 o'clock m. and 6 o'clock p. m., said property was offered at public sale in front of the City Hall, except lot 1, square 677,

which offered at public sale on premises, in the city of Washington, D. C., by Green & Williams, auctioneers; that the following persons, being the highest bidders, became the purchasers of the lots attached to their names :

John E. Norris,	lot No. 3,	sq. 776,	for			$500 00
Mrs. E. Kelly	" 4,	" "	"			570 00
Mrs. E. Kelly	" 5,	" "	"			440 00
Timothy Downy	" 6,	" "	"			410 00
Columbus Alexander	" 7,	" "	"			430 00
Columbus Alexander	" 8,	" "	"			440 00
Mrs. E. Kelly	" 25,	" 625	"			455 00
Mrs. E. Kelly	E. ½ of " 20,	" 625	"	Cabot's sub-division		226 00

The said Timothy Downey has, since the said sale, transferred and assigned all his interest in and to his purchase of the said lot No. six, in square No. 776, to James Muliqueen, and the said Muliqueen and the other purchasers have complied with the terms of sale. The said Ellen Kelly has, since the said sale, transferred and assigned all her interest in and to her purchase, east half of lot No. 20, in square 620, to D. Quill, and the said Quill and the other purchasers have complied also with said sale.

Said sales were conducted with perfect fairness, in front of
26 the said City Hall, and in presence of the persons there assembled.

The undersigned have twice offered at public sale lot numbered one, (1,) in square numbered 677, but have been unable to dispose of the same, on account of defect in the title. The intestate, Kelly, held it under a defective tax title, as the undersigned are informed, and so believe.

WM. J. MILLER,
J. F. ENNIS,
Trustees.

[5 cent. stamp.]

Subscribed and sworn to by W. J. Miller, one of the trustees.

OWEN
v.
KELLY. } No. 70. Equity.

May 26, 1864. R. J. MEIGS, *Clerk, &c.*

Receipts.

WASHINGTON, *Oct.* 20, '64.

Received of John F. Ennis and William J. Miller, trustees in the above cause, five hundred and forty-four 66-100 dollars, being the balance in full reported by the auditor to be due, out of the funds in the hands of the said trustees, Ennis and Miller.

JOHN F. ENNIS,
Att'y for Muliqueen.

27 Owen v. Kelly } 70. Equity.

Auditor's fees $23 25
Paid for advertising 3 00
Received of W. J. Miller, trustee.

W. REDIN,
Aud'r, 26 *July*, '64.

WASHINGTON, *Sept'r* 5, '64.

Received of John F. Ennis and Wm. J. Miller, trustees, three hundred and forty 75-100 dollars, on account of dividend awarded to me by auditors in the chancery cause of Owen *& al. vs.* Kelly *& al.*

JAS. MULIQUEEN.

Advertisement.

"By Green & Williams, auctioneers. Sale of valuable Real Estate.

"By order of the Supreme Court of the District of Columbia, sitting as a Court of Equity:

"By virtue of a decree of the Supreme Court of the District of Columbia, sitting in equity, and passed in a certain cause at the special term of said court, held on the 10th day of December, A. D. 1863, wherein Edwin Owen and Ellen Owen, his wife, and others, are complainants, and Ellen Kelly, widow of Miles Kelly, and James Muliqueen, are defendants, we, as trustees, shall proceed to sell on
28 the premises, at auction, on Friday, the 15th day of January, A. D. 1864, at the hour of 4 o'clock, p. m., all those pieces or parcels of ground known and designated on the plat or plan of the city of Washington, District of Columbia, as lot numbered twenty-five, (25) in square numbered six hundred and twenty-five (625); also the east half (E. ½,) of lot numbered six hundred and twenty-five, (25,) agreeably to Cabot's sub-division of said square, the said lot and part of lot being situate on North G street, between North Capitol street and First street, west; also lots numbered one, (1,) in square numbered six hundred and seventy-seven, (677,) situate and being on North G street, between North Capitol street and East First street, also lots numbered three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) and eight, (8,) in square numbered seven hundred and seventy-six, (776,) situate and being on North H street, East Third (3) street, and North I street, with the improvements.

"The sale will commence with the above-mentioned lot, and will be continued from day to day, at the same hour, until all the said lots are disposed of.

"The terms of sale, as prescribed by the said decree, one-third (⅓) cash, and the balance to be paid in equal instalments in six (6) and twelve (12) months from the day of sale; the said balance
29 to bear interest from the day of sale, and the payment thereof

to be secured by the bonds of the purchaser or purchasers, with surety or sureties to be approved by the trustees; and on the ratification of each sale or sales by the court, and on the payment of the whole of the purchase-money and interest, the said trustees shall, by good and sufficent deeds, convey to the purchaser or purchasers the said property free, clear, and discharged of all claims of the parties to this cause.

"If the terms of sale be not complied with in five (5) days from the day of sale, the trustees reserve the right to re-sell the property, at the cost and risk of the first purchaser or purchasers.

"JOHN F. ENNIS,
" WM. J. MILLER, *Trustees.*

"GREEN & WILLIAMS,
"Dec. 30—d.2w. *Auctioneers.*"

"☞ In consequence of the inclemency of the weather, the above sale is postponed until Saturday, the 6th day of February, 1864.

"The sale will take place in front of the City Hall, commencing at 12 o'clock, m.

"Bidders are requested to examine the property before the day of sale.

"JOHN F. ENNIS,
WM. J. MILLER,
" *Trustees.*"

"GREEN & WIILLIAMS,
"Jan'y 16. *Auctioneers.*"

30 OFFICE OF THE NATIONAL INTELLIGENCER,
Washington, February 6, 1864.

Proof of publication.—Filed May 26, '64.

We hereby certify that the advertisement, of which the annexed is a copy, was published in the National Intelligencer daiiy until January 15, 1864; postponed and published daily until February 6, 1864, commencing on the 30th day of December, 1863.

For GALES & SEATON.
EDWARD S. FLETCHER.

Auctioneer's account of sales.—Filed May 26, '64,

WASHINGTON, D. C., *May 12th*, '64.

Account of sales by GREEN & WILLIAMS, auct's, for JOHN F. ENNIS and E. J. MILLER, trustees:

On the 30th day of Dec'r, 1863, by order of the Supreme Court of the District of Columbia, the hereafter-named property was advertised to be sold on the 15th day of January, 1864; but, on account of the inclemency of the weather, the sale was postponed until the

6th day of February, 1864, at which time the property was sold, as follows:

Lot	3,	in sq'r 776,	bo't by Jno. E. Norris, for	$500	00
"	4,	" 776,	" Ellen Kelly, for	570	00
"	5,	" 776,	" Ellen Kelly, for	440	00
"	6,	" 776,	" T. Downey, for	410	00
"	1,	" 677,	" C. Alexander, for	500	00
	Lot 25,	in sq'r 625,	bo't by Ellen Kelly, for	455	00
31	Lot 20, E½	" 625,	" Ellen Kelly, for	226	00
	Lot 7,	in sq'r 776,	bo't by C. Alexander, for	430	00
Lot	8,	in sq'r 776,	bo't by C. Alexander, for	440	00
				$3,971	00

Terms of sale, one-third cash, the balance in six and twelve months, for notes bearing interest from day of sale, secured to the satisfaction of the trustees.

H. BURR,
For GREEN & WILLIAMS.

WASHINGTON, D. C., *May 12th*, 1864.

JOHN F. ENNIS, WM. J. MILLER, } Trustees,

To GREEN & WILLIAMS, Auctioneers, Dr.

Dec. 30th, '63.	To advert. prop. in Intell.	$26	00
Jan'y 15, '64.	To commission for services	10	00
Jan'y 16, '64.	To advert. prop. in Intell.	40	00
Feb. 6, '64.	To commission for services	5	00
Feb. 6, '64.	To bell-man	1	00
		$82	00

Received payment.

H. BURR.
For GREEN & WILLIAMS.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Personally appeared before me, a justice of the peace in and
32 for said county, Amon Green, of the firm of Green & Williams, auctioneers, who, being sworn in due form of law, deposes and says, that the within statement is correct and true, to the best of his knowledge and belief.

Sworn to this 12th day of May, 1864.

BENJ. S. KINSEY, *J. P.*

[5 cent stamp.]

Ratification nisi., and ref. to auditor.—Filed May 26, '64.

OWEN *vs.* KELLY. } No. 70. Equity.

The trustees in the above cause having reported that on the 6th day of February, A. D. 1864, after due notice of the time, place, and terms of sale, they sold and disposed of the following lots of ground in the city of Washington, D. C., to the following persons, at and for the sums hereinafter named:

To John E. Norris, lot No. 3, sq. 776, for $500 00; to Ellen Kelly, lot No. 4, sq. 776, for $570 00; to Ellen Kelly, lot No. 5, sq. 776, for $440 00; James Mulquin, assignee of TimothyDowney, lot No. 6, sq. 776, for $410 00; Columbus Alexander, lot No. 7, sq. 776, for $430 00; Columbus Alexander, lot No. 8, sq. 776, for $440 00; Ellen Kelly, lot No. 25, sq. 625, for $455 00; D. Quill, assignee of Ellen Kelly, lot No. 25, sq. 625, for $226 00.

33 And that the said purchasers have since complied with the terms of said sales, it is this 26 May, 1864, thereupon on motion of complainant's counsel, ordered by the court that the said sales so made to the said purchasers be and the same are hereby ratified and confirmed, unless cause to the contrary be shown, on or before the 4th day of July, A. D. 1864, provided a copy of this order, or so much thereof as relates to the ratification of said sales, be published once a week for three weeks in the National Intelligencer of this city prior to said day.

And it is further ordered by the court, that the above cause be opened to the auditor, with instructions to take and state the account of the trustees in said cause, making to them, in said account, all just and usual allowances; and that he also state the claims of the several parties in and to the proceeds of sale, and make distribution of the same amongst the said parties.

A. B. OLIN, *Justice.*

Final ratification.—Filed July 5, '64.

OWEN *& al.* *vs.* KELLY *& al.* } No. 70.—Equity.

The decretal order of this court, passed in the said cause, on the twenty-sixth day of May, 1864, for the ratification nisi of the
34 sales made by the trustees in this cause, and set forth and enumerated in the said orders of ratification nisi, having been duly published as directed by said order, and no cause having been or now being shown against the final ratification of said sales, it is, upon motion of complainant's counsel, further ordered by the court, this fifth day of July, 1864, that the said sales, and every of them, be and the same are hereby finally ratified and absolutely confirmed, and the said trustees are hereby authorized and directed, upon full

payment of the purchase-money and interest, to convey the several premises to the respective purchasers, their heirs and assigns, in fee simple.

By order of the court.

Auditor's report.—Filed July 28, '64.

EDWARD OWEN and wife, JAMES KAHOE and wife, and Philip Kelly,
against
ELLEN KELLY and JAMES MULIQUEEN.
No. 70. Equity.

By the order of the 24th May, 1864, I am directed to state the account of the trustees, and the proper distribution of the trust fund between the parties.

I gave the following notice:

35 "Supreme Court of the District of Columbia.

"EDWARD OWEN and ELLEN, his wife, James Kahoe and Margaret, his wife, and Philip Kelly,
against
ELLEN KELLY and JAMES MULIQUEEN.
No. 70. In Equity.

"The parties above named, and the trustees in the cause, Messrs. Ennis and Miller, are hereby notified that, on the 21st day of June next, at eleven o'clock in the forenoon, at my office in the City Hall, Washington, I shall state the trustees' account, with the trust fund, and the shares of the complainants and defendants therein. They are requested to attend.

"May 30.

"W. REDIN, *Auditor.*"

And the trustees and the counsel of the complainants and of the defendant, Muliqueen, attended.

The property sold was lots No. 25, in square No. 625, and the east half of lot No. 20, in the same square, according Cabott's subdivision, which belonged solely to Miles Kelly, and lots No. 3, 4, 5, 6, 7, and 8, in square 776, which he and the defendant, Muliqueen, held equally as tenants in common.

The bill was filed by the complainants, alledging Kelly's
36 intestacy, claiming to be his heirs-at-law, against his widow and Muliqueen, seeking a sale of the property for the purpose of division among them, a specific partition not being possible without injury. All the parties united in a request for a sale, without prejudice to the rights of any of them on the fund.

Kelly appears to have emigrated from Ireland, to have become a naturalized citizen on the 3d May, 1855, and to have acquired by deed, on the 20th May, 1853, lot No. 25, in square No. 625, before his naturalization, and the other lots subsequent thereto.

Mrs. Owens, Mrs. Kahoe, and Philip Kelly claim to be his brother and sisters and his heirs-at-law, it being alleged that he died without issue.

They were all aliens born, and under the construction of an act of cession of 1791, in Spratt's case, (1 and 4 Peter's Rep.,) they are incapable of inheriting the real property he acquired after his naturalization, unless they were naturalized citizens at the time of the descent cast, namely, his death, which occurred in 1862. The lot acquired in 1853 by deed, being before his naturalization, they all take. Philip is still an alien; but Mrs. Owens and Mrs. Kahoe offer to show, and expect to prove, that they were citizens by naturalization before the intestate's death, and therefore are entitled to
37 the lots acquired by him after his naturalization. As yet, however, there is no proof of the relationship, nor sufficient proof, as alleged, of the naturalization of Mrs. Owens and Mrs. Kahoe, and it may be some time before it is supplied.

I am required, therefore, on behalf of the defendant, Mulliqueen, who has no interest in this question of heirship, but who is entitled to an equal half of the net proceeds arising from the sale of the lots which were held in common by him and Kelly, to make a partial report, ascertaining the amount due to him for his share of the purchase-moneys of those lots, which the trustees admit to have in their hands. This I have done; and deducting a due proportion of the costs, expenses of sale, commissions, &c., and also the purchase-money of one lot bought by him at the trustees' sale, find the sum of $887 41-100 due to him, which, upon the final ratification of the sales, and upon the maturity and payment of the deferred instalments, the trustees can pay to him.

Schedule K shows the trustees' account, and the amount due to Mulliqueen. I have charged him, in such account, with half a due proportion (as the amount of the purchase-money of the lots in which he was interested bore to the whole sale) of the clerk's costs, commission, auctioneer, and advertising, audit, &c., and ascertained the net balance due to him to be as above.

16 July, 1864.

W. REDIN, *Auditor.*

38 *Schedule K.*

FEB'Y 6th, 1864.

Messrs. Ennis & Miller, trustees as to the lots held by Kelly and Muliqueen.

	Total.	Cash.
To purchase money of lot 7, sq. 776, sold to C. Alexander, all cash	430 00	430 00
To do of lot No. 8, same square, same purchaser	440 00	440 00
To do of lot No. 2, Jno. E. Norris	500 00	166 66
To do of lot No. 4, Mrs. E. Kelly	570 00	300 00
To do of No. 5, do	440 00	
To do of No. 6, Mulliqueen, asses. of Downy	410 00	410 00
	$2,790 00	$1,796 66

By allowances:		
Auctioneer's and advertising, and bill sticker	91 50	
Clerk's fees	19 15	
Taxes paid	6 26	
Publishing order nisi	7 50	
Audit 23 25, publishing notices, $3	26 66	
	$153 66	
Off for proportion appertaining to the other lots owned individually by Kelly	26 51	
	$127 15	
Trustees' commission	1 15	
		242 15
Balance of cash payments		$1,504 51
Deferred payments:		
Mrs. Kelly: Principal	710 00	
Interest	31 95	
		741 95
Mr. Norris: Principal	333 34	
Interest	15 03	
		348 95
		$2,594 82
39 Muliqueen's half thereof	1,297 41	
Of which he has received, in the purchase money for the lot No. 6, bought by him	410 00	
	$887 41	

Which will be payable to him when the deferred payments of the purchase-money shall have matured; and now the trustees have $342 75 in cash of his half, which would leave $544 66 to be paid to him at the maturity of the last note.

Kelly's half of the joint proceeds carried to the individual account of his estate, where the dower of his widow is allowed and deducted from the whole of his interests.

The same trustees in ac. with the estate of M. Kelly.

To half the net proceeds from the sale of the lots in sq. No. 776, held in commn with Muliqueen		$1,306 79
To purchase money of lot 25, sq. No. 625, by Mrs. Kelly, cash portion	$151 66	
Deferred pay'ts and interest	316 93	
		468 59
To do. of E. ½ 20 sq. 625—Quill—cash	75 33	
Def'd pay'ts	157 42	
		232 75
		2,008 13

BY ALLOWANCES:

Proportion of costs as above	$26 51	
Solicitors app'ce fee	20 00	
His extra fee under the rule	25 00	
Auct'r and adv'g lot 1, sq. 677	18 38	
Com'n to trustees on $701	21 03	
		110 92
40 Carried forward		$1,897 21
Bro't forw'd		1,897 21
The commutation for widow's dower 1-7th		271 03
For the heirs		$1,626 18
Of which (if they establish their right) the brother and two sisters will take the net proceeds of 25, in sq. 625, (purchased before naturalization,) equally among them, amount	$455	
Off proport'n of costs, &c	20	
	435 00	
And the two sisters the residue, (purchased after naturalization	1,191 75	
		1,626 18

16 July, '64.

W. REDIN, *Aud'r.*

Certificate of naturalization of Edward Owen.—Filed with auditor's report July 28, '67.

DISTRICT OF COLUMBIA, *to wit:*

At a Circuit Court of the United States for the District of Columbia, held for the county of Washington, at the city of Washington, on the fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States the 60th.

Present: The Honorable William Cranch, chief judge: Buckner Thurston and James S. Morsell, associate jugdes; William Brent, clerk.

41 In the record of the proceedings of the same court, among others, are the following:

Be it remembered that heretofore, to wit, on the 2d day of June, in the year of our Lord one thousand eight hundred and thirty-one, at the county of Washington aforesaid, appeared Edward Owen, a native of England, aged about thirty-nine years, bearing allegiance to the King of the United Kingdom of Great Britain and Ireland, having emigrated from Liverpool and arrived at New York on the twenty-third day of September, in the year of our Lord one thousand eight hundred and thirty, and intends to settle at the city of Wash-

ington, and in open court reported himself for naturalization, and declared on oath that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly to the King of the United Kingdom of Great Britain and Ireland, according to the laws of Congress in such cases made and provided.

And now, to wit, on this 2d day of June, in the year of our Lord one thousand eight hundred thirty-five, appears again in open court here the said Edward Owen, and exhibits to the court here a certificate of his report and declaration aforesaid; and it appearing to the satisfaction of the court, by the oaths of William Waters
42 and William A. Waters, citizens of the United States, and the said Edward Owens has resided within the limits and under the jurisdiction of the United States for five years last past, without having been out of the territory of the United States during that time, and one year last past within the limits and under the jurisdiction of this court; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

And the said Edward Owen in open court here makes oath that he will support the Constitution of the United States and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State or sovereignty whatever, and particularly to the King of the United Kingdom of Great Britain and Ireland, to whom he was before a subject. It is, therefore, ordered by the court here that the said Edward Owen be admitted a citizen of the United States; and he is accordingly admitted a citizen of the United States, [and he is accordingly admitted a citizen of the United States] agreeably to the laws of Congress in such case made and provided.

In testimony that the foregoing is truly taken from the
43 records of the proceedings of the said court, I have hereto subscribed my name and affixed the seal of the said court the second day of June, one thousand eight hundred and thirty-six.

[SEAL.] WM. BRENT, *Cl'k.*

Order of ratification of auditor's report.—Filed Sept. 8, '64.

OWENS *& al.* *vs.* KELLY *& al.* } No. 70. Equity.

The report of the auditor in the above cause having been duly returned and filed in said cause on the 28th day of July, 1864, and the same having stood open for exception the usual time prescribed by the rules of this court, and no exception having been taken to the same, it is thereupon, on motion of complainant's counsel, ordered by the court, this eighth day of September, 1864, that the said re-

port of the said auditor be and the same is hereby ratified and confirmed, and the trustees in said cause are authorized and directed to distribute the money now in their hands, or which may hereafter come into their hands, according to report of the said auditor.

GEO. P. FISHER,
Justice S. C. D. C.

44 In the Supreme Court of the District of Columbia, sitting as a Court of Equity.

Deposition.—Filed Dec. 19, '64.

EDWIN OWEN, ELLEN OWEN, JAMES Kahoe, Margaret Kahoe, and Philip Kelly, complainants,
vs.
ELLEN KELLY, widow of Miles Kelly, deceased, and James Mulliqueen, defendants.
} Equity. No 70.

Interrogatories to be propounded to Edward Owen, of the city of Washington, in the District of Columbia, witness on behalf of the complainants in the above-entitled cause:

1st interrogatory. What is your name, age, occupation, and place of residence?

2d interrogatory. Are you, or are you not, interested in the above-entitled cause? If you are, please state in what manner.

3d interrogatory. In what city, town, or place, county, and country were you born?

4th interrogatory. When did you come or arrive within
45 the United States of America, to the best of your knowledge and behalf.

5th interrogatory. At what port, city, and State did you land?

6th interrogatory. Are you, or are you not, a naturalized citizen of the United States? If yea, please state when you were naturalized. In what city, town, county, and State you were naturalized, and by what court.

7th interrogatory. Have you, or have you not, your naturalization certificate or papers? If yea, please produce it or them as part of your answer. If you have not the certificate or papers, please state where they are and in whose possession.

8th interrogatory. Are you married or single? If married, please state to whom you are married; where were you married; in what city, town, county, district, or State you were married; by what clergyman you were married, and what is his name.

9th interrogatory. Where does your wife and family reside,
46 and what is the name of your wife?

10th interrogatory. Are you, or are you not, a relative of Miles Kelly, deceased, mentioned in the above-entitled cause? If yea, please state what that relationship was or is.

11th interrogatory. Did, or did not, the said Miles Kelley, deceased, leave any child or children? If yea, please state their names, ages, and place of residence.

12th interrogatory. Do you know whether the said Miles Kelly, deceased, left any brothers and sisters of the whole blood surviving him? If yea, please state their names, ages, and place of residence, and state if any of them are married, and if married, to whom married.

13th interrogatory. Did you, or did you not, come to the United States of America before or after the death of the said Miles Kelly?

14th interrogatory. Are you, or are you not, acquainted with James Kahoe and Margaret Kahoe, Philip Kelly, and Ellen Kelly, or Ellen Owen? If yea, please state the relationship each of them are to you, and what relationship they were or are to Miles Kelly, deceased.

15th interrogatory. Do you know, or can you set forth, any
47 other matter or thing which may be a benefit to the parties at issue in this cause or either of them, or that may be mentioned to the subject of this examination, or in the matter in question in this cause? If yea, set the same forth and at large in your answer.

Interrogatories to be propounded to Ellen Owen, of the city of Washington in the District of Columbia, witness on behalf of the complaintants in the above cause.

1st interrogatory. What is your name, age, occupation, and place of residence?

2nd interrogatory. In what city, town or village, county, and country were you born?

3rd interrogatory. When did you arrive within the United States of America?

4th interrogatory. At what port or landing, city, town, village, county, and State did you arrive?

5th interrogatory. Are you married or single? If married, please state to whom are you married, and please state when you were married, by what clergyman you were married, and where you were married.

6th interrogatory. Are you interested in the above cause?
48 If yea, please state in what manner.

7th interrogatory. Are you, or are you not, a relative of Miles Kelly, deceased, late of the city of Washington in the District of Columbia, mentioned in the above-entitled cause? If yea, please state what relationship you were or are to the said Miles Kelly, deceased.

8th interrogatory. Do you know if the said Miles Kelly, deceased, left any child or children? If yea, please state their names, ages, and place of residence.

9th interregatory. Did the said Miles Kelly, deceased aforesaid, leave any brothers or sisters of the whole blood surviving him? If yea, please state their names, ages, and place of residence. If married, to whom were they married?

10th interrogatory. Did you come to the United States before or after the decease of the said Miles Kelly?

11th interrogatory. Are you acquainted with James Kahoe, Margaret Kahoe, Edward Owen, Ellen Kelly, and Philip Kelly? If yea, please state the relationship each of them were to the said Miles Kelly, deceased, and what relationship each of them are to
49 you.

12th interrogatory. Do you know whether Philip Kelly has ever been within the United States of America? If yea, please state what time, and whether the said Philip Kelly has ever been naturalized as a citizen of the United States of America, and state where the said Philip Kelly resides.

12½ interrogatory. Do you know whether the said Miles Kelly, deceased, left any other real estate, besides the real estate mentioned in said bill, to the best of your knowledge? If yea, please state same.

13th interrogatory. Do you know, or can you set forth, any other matter, or which may be a benefit or advantage to the parties at issue in this cause, or either of them or that may be material to the subject of this examination or in the matters in question in this cause. If yea, set forth the aame and at large in your answer.

WM. JNO. MILLER,
Solicitor for complainants.

We agree to the taking of the above deposition before commissioner Beale upon the above interrogatories and the following cross-interrogatories:

50 1st x-interrogatory. On what day and year, to the best of your knowledge and belief, did you arrive in the United States, and what time elapsed before you married her?

2d x-int. Was she ever naturalized to the best of your knowledge and belief?

3rd x-int. On what day did Margaret Kahoe arrive in the United States, and in what year?

4th x-int. On what day did the said Mary Kahoe intermarry with James Kahoe, to your knowledge, and was she or said James ever naturalized, to your knowledge?

R. J. BRENT, *for Ellen Kelly.*

To above cross-interrogatories to be taken subject to all legal exceptions. WM. JNO. MILLER, *Sol. for compl't.*

51 Supreme Court of the District of Columbia.

EDWARD OWEN *et al.*
vs.
ELLEN KELLY, adm., *et al.* } No. 70. Equity.

EXAMINER'S OFFICE,
The 17th day of December, 1864.

I, Robert M. Beale, examiner of the said court, do hereby certify that, on this 17th day of December, 1864, in pursuance of the agree-

ment of the counsel herewith returned, I proceeded to take testimony in the above-entitled cause, under the written interrogatories and cross-interrogatories therein exhibited and herewith inclosed, in the presence of the complainants and Mr. Miller, their solicitor; and thereupon—

Edward Owen, a witness produced on the part of complainants, being by me duly sworn, deposes in says in answer to the interrogatories herewith returned, to wit:

1st. To the 1st interrogatory: I am seventy years of age; reside in this city, and am by trade a tailor.

2d. To the 2d: I am interested to the extent of being the husband of Ellen Owen, the complainant.

3d. To the 3d: I was born in Montgomeryshire, North Wales, Great Britain.

4th. To the 4th: I arrived here in September, A. D. 1830.

5th. To the 5th: At the port of New York.

6th. To the 6th: I was naturalized in this city in March, 1836, by the Circuit Court of the Dist. of Columbia.

52 7th. To the 7th: This paper (herewith returned, marked E. O.) is the certificate of my naturalization.

8th. To the 8th: I am married. I was married in this city on the 29 day of December, 1861, to Ellen Kelly, by the Reverend Dr. Edwards, a clergyman of the Methodist Episcopal Church.

9th. To the 9th: They reside on P street, between 14th and 15th streets, in this city.

10. To the 10th: I am related to him by marriage. My wife is his sister.

11. To the 11th: Miles Kelly left no child.

12. To the 12th: He left two sisters of the whole blood, Margaret Kahoe and Ellen Kelly, my wife. Margaret Kahoe is the wife of James Kahoe. I think she lives in Troy, in the State of New York. I have heard that he left a brother in Ireland.

13. To the 13th: I came to this country long before the death of Miles Kelly.

14th. To the 14th: I know James and Margaret Kahoe. Margaret Kahoe is a sister of Miles Kelly, deceased, and James Kahoe is her husband. I do not know Philip Kelly. I have seen Ellen Kelly, the widow of Miles Kelly, deceased, but have no acquaintance with her. Ellen Owen, my wife, is a sister of Miles Kelly, deceased.

15th. To the 15th: There is real estate in this city recorded in his name. That is all I know about the case.

53 And to the cross-interrogatories the said witness answers as follows:

1st x. To the 1st: I do not know when she arrived in this country.

2d x. To the 2d. I am not aware whether or not she was naturalized.

3d x. To the third: I do not know.

4th x. To the 4th: I do not know.

E. OWEN.

Ellen Owen, one of the complainants, a witness produced on the part of the complainant, being by me first duly sworn, deposes and says, in answer to the several interrogatories, as follows:

1st. To the 1st: My name is Ellen Owen; I am the wife of Edward Owen, the witness last examined; my age is twenty-six years; I reside on P street, between 14th and 15th streets, in this city.

3d. To the third: I arrived in this country about 7 years ago.

2d. To the second: I was born in the town of Palace, in county Wexford, Ireland.

4th. To the fourth: To the fourth int.: I landed at Philadelphia, Penn.

5th. To the fifth: I am married to Edward Owen. I was married to him on the 24th day of December, 1861, in this city, by Dr. Edwards, a clergyman of the Methodist church.

54 6th. To the sixth int.: I am interested in this cause, because I am a sister of Miles Kelly, deceased.

7th. To the seventh: I am a sister of the whole blood of Miles Kelly, deceased.

8th. To the eighth int.: Miles Kelly left no child.

9th. To the ninth int.: He left two sisters and a brother of the whole blood, Margaret and myself, and Philip Kelly. Margaret is married to James Kahoe. She lives in Troy, New York, and is about thirty-nine years of age. Philip Kelly lives in Ireland; he is about thirty-six years of age, and married.

10th. To the tenth int.: I arrived here before the death of Miles Kelly.

11th. To the eleventh int.: Margaret Kahoe, Philip Kelly, myself, and Miles Kelly, deceased, are brothers and sisters to each other. James Kahoe is the husband of Margaret Kahoe; Edward Owen is my husband, and Ellen Kelly is the widow of Miles Kelly.

12th. To the twelfth int.: Philip Kelly has never been in this country; he lives in Ireland.

12½. To the 12½ int.: I do not know what real estate Miles Kelly left or owned.

13. To the thirteenth int.: I know nothing more about the matter in issue.

And to the cross-interrogatories exhibited the witness answers as follows:

To the first cross-interrogatory: I arrived in the United
55 States about 7 years ago, about June, before my marriage.

To the second int.: I never was naturalized, unless by the naturalization of my husband.

To the third cross-int.: Margaret Kahoe arrived in this country in 1849 or 1850.

To the fourth cross-int.: I think she intermarried with James Kahoe; has been naturalized; I do not know whether Margaret has.

ELLEN KELLY.
ELLEN OWEN.

And the said witnesses having been examined, and their testimony having been by me reduced to writing, and read over to and signed by them, respectfully, in my presence and in the presence of the counsel in attendance, the said testimony is by me sealed up, and this 19th day of December returned to the said court.

[SEAL.] B. M. BEALE, *Examiner.*

[5-cent stamp, cancelled.]

In the Supreme Court of the [Supreme Court of the] District of Columbia, sitting in equity.

Interrogatories.—Filed Jan'y 10, '65.

EDWARD OWEN *et al.*
vs.
ELLEN KELLY *et al.* } 70. Equity.

Interrogatories to be propounded to James Kahoe, East Troy, New York, or wheresoever the said James Kahoe may be, as witness on behalf of the complainants in the above-entitled cause.

56 1st interrogatory. What is your name, age, occupation, and place of residence?

2d interrogatory. Did you ever reside in the State of Kentucky? If yea, please state the name of the town, or village, and county.

3d interrogatory. Are you or are you not interested in the above cause? If yea, please state in what manner interested.

4th interrogatory. In what city, town, or place, and county, and country were you born?

5th interrogatory. When did you come or arrive within the United States of America? Please state the day, month, and year you arrived, to the best of your recollection.

6th interrogatory. At what port, city, and State did you arrive or land?

7th interrogatory. Are you or are you not a naturalized citizen of the United States of America? If yea, please state at what time you were naturalized; in what city or town, county and
57 State, you were naturalized; and in what court naturalized.

8th interrogatory. Have you or have you not your naturalization certificate or paper? If yea, please produce it or them, as part of your answer. If you have not the certificate or paper, please state where they are, and in whose possession you left them.

8½ interrogatory. If to the 7th interrogatory you should state you were naturalized, please examine the annexed certificate or exhibit, marked G, and state whether that naturalization paper or certificate, and by whom it was given to you.

9th interrogatory. Are you married or single? If married, please state to whom you were or are married; when you were married; in what city, or town, county, district, or State you were married; and by whom were you married.

10th interrogatory. Where do your wife and family reside, and what is the name of your wife?

11th interrogatory. What was the name of your wife before her marriage to you?

12th interrogatory. Are you or are you not a relative of Miles Kelly, deceased? If yea, please state what that relationship was or is.

58 13th interrogatory. Did or did not Miles Kelly, deceased, leave any child or children? If yea, please state their names, ages, and place of residence.

14th interrogatory. Do you know whether the said Miles Kelly, deceased, left any brothers and sisters of the whole blood surviving him, the said Miles Kelly, deceased? If yea, please state their names, ages, and places of residence; and if any of them are married; and if married, to whom are they married.

15th interrogatory. Did you or did you not come or arrive within the United States of America before or after the decease of the said Miles Kelly?

16th interrogatory. Are you or are you not acquainted with Edward Owen, Ellen Owen, Margaret Kahoe, Ellen Kelly, and Philip Kelly? If yea, please state the relationship they were or are to the said Miles Kelly, deceased, and what [relationship they were or are to the said Miles Kelly, deceased, and what] relationship they and each of them are to you.

59 17th interrogatory. Do you know any other matter or thing touching the matters in controversy between the parties in this cause which will benefit the complainants in this cause? If yea, please state them and set them forth, and at large, in your answer, as if you were particularly interrogated thereto.

WM. JNO. MILLER,
Solicitor for Complainants.

We agree to the taking of the deposition of James Kahoe, according to the above interrogatories, and x-interrogatories annexed, subject to all exceptions to the competency of said Kahoe.

R. J. BRENT,
Solicitor for Ellen Kelly.
JOHN F. ENNIS,
Solicitor for James Mulliqueen, Defendant.

Cross-interrogatories to James Kahoe.

1. State why you and the said Margaret Kelly, otherwise called Margaret Kahoe, do not now reside together, and how long have you been living separate from her.

(Cross-interrogatory objected to by Miller, for compl'ts.)

2. State if you have not told Mrs. Ellen Kelly, at her house where she was residing last July, and in said month, that you had

60 never married Margaret Kelly.

R. J. BRENT,
For ELLEN KELLY.

The solicitor for the complainants objects the first cross-interrogatory.

W. J. MILLER,
Solicitor for Compl'ts.

Re-examination interrogatories on part of complainants.

If to the second cross-interrogatory should be yes, state the whole conversation between you and Mrs. Ellen Kelly, defendant.

WM. JNO. MILLER,
Solicitor for Complainants.

Deposition of a witness sworn and examined the 12th day of December, A. D. 1864, at Troy, New York, under and by virtue of a commission issued out of the Supreme Court of the District of Columbia, sitting as a court of equity, in a certain cause therein depending and at issue between Edward Owen, Ellen Owen, James Kahoe, Margaret Kahoe, and Phillip Kelly, complainants, *vs.* Ellen Kelly, widow of Miles Kelly, dec'd, and James Muliqueen, defendants, as follows:

61 James Kahoe, of East Troy, New York, aged thirty-one years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined as a witness on behalf of the complainants in the above-entitled cause, doth depose and say as follows:

First. To the first interrogatory he saith: My name is James Kahoe. I am thirty-one years of age. I am an iron puddler by occupation. My place of residence is the city of Troy, sometimes called East Troy, in the county of Renssalaer, and State of New York.

Second. To the second interrogatory he saith: I resided in the State of Kentucky, in the city of Covington, Kenton county.

Third. To the third interrogatory he saith: I am interested in the above cause. I am one of the parties complainant, and husband of Margaret Kahoe, another of the parties complainant, and sister of Miles Kelly, dec'd.

Fourth. To the fourth interrogatory he saith: I was born in the townland of Coolroe, in the parish of Tentern, in the county of Wexford, Ireland.

Fifth. To the fifth interrogatory he saith: I arrived within the United States of America in the month of February, in the year one thousand eight hundred and forty-nine.

62 To the sixth interrogatory he saith: I arrived and landed at the city of Baltimore, in the State of Maryland.

Seventh. To the seventh interrogatory he saith: I am a naturalized citizen of the United States of America. I was naturalized on the ninth of October, A. D. 1854, at the city of Cincinnati, Hamilton county, in the State of Ohio, in the Criminal Court holden within and for the county of Hamilton.

Eighth. To the eighth interrogatory he saith: I have my naturalization certificate, and the same is hereto annexed.

Ninth. To the ninth interrogatory he saith: I am married to the complainant, Margaret Kahoe. We were married in September, one thousand eight hundred and fifty-two, in the city of Washington, in the District of Columbia, by the Rev'd Mr. Donlon, pastor of the Catholic church in 14th street, in the city of Washington, D. C.

Tenth. To the tenth interrogatory he saith: My wife and family has resided, up to Friday last, at Covington, Kentucky, and I have learned by a letter, which I received on Saturday evening last, stating that they were to have left Covington on Friday last to come on here to Troy, to live here with me. My wife's name is Margaret Kahoe.

63 Eleventh. To the eleventh interrogatory he saith: My wife's name before her marriage to me was Margaret Kelley.

Twelfth. To the twelfth interrogatory he saith: I am related to Miles Kelly, dec'd; a brother-in-law, as stated in the answer to the third interrogatory.

Thirteenth. To the thirteenth interrogatory he saith: Miles Kelly deceased did not to my knowledge leave any child or children.

Fourteenth. To the fourteenth interrogatory he saith: Miles Kelly, deceased, left him surviving a brother Philip, who is married and resides in Ireland, in the county of Wexford—I don't know his age —and two sisters, my wife Margaret, and Ellen Owen, wife of Edward Owen, complainants in this cause—I don't know their ages. Ellen Owen lives in Washington City, District of Columbia.

Fifteenth. To the fifteenth interrogatory he saith: I arrived within the United States of America before the decease of the said Michael Kelly.

Sixteenth. To the sixteenth interrogatory he saith: I am acquainted with Edward Owen, Ellen Owen, Margaret Kahoe, and Ellen Kelly personally, but have never seen Phillip Kelly. Ellen and Margaret Kahoe are the sisters of said Miles Kelly, deceased; and Ellen Kelly is the widow of of the said Miles Kelly, deceased; Edward Owen

64 is the husband of Ellen Owen; she is the sister of Margaret Kahoe and Philip Kelly, and Margaret Kahoe is my wife; the said Ellen Owen is my sister-in-law, and Philip Kelly is my brother-in-law; and Ellen Kelly is the wife of Miles Kelly, deceased, who was my brother-in-law.

Seventeenth. To the seventeenth interrogatory he saith: I do not know.

First X. To the first cross-interrogotory he saith: The reason why myself and the said Margaret Kelly, otherwise called Margaret Kahoe, do not now reside together is, that I left Covington, Kentucky, for the purpose of procuring more profitable employment and better wages than I had there. I intended to send for my wife and family to come and reside with me as soon as I should be permanently located elsewhere. I have been living separate from her about five months.

Second X. To the second cross-interrogatory he saith: I have not told Mrs. Ellen Kelly at her house, (or any where else,) where she resided last July, nor in said month, (nor at any other time,) that I had never married Margaret Kelly.

JAMES KAHOE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me, and signed and sealed by me this 12th day of December, 1864.

[SEAL.] JOHN MORAN, *Commissioner.*

65 *Naturalization of James Kahoe.*

UNITED STATES OF AMERICA:

STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on the 9th day of October, in the term of October, eighteen hundred and fifty-four, of the Criminal Court, holden within and for the county of Hamilton aforesaid, personally came James Kehoe, a native of Ireland, who came into the United States when under the age of 18 years, and declared his intention to become a citizen of the United States of America, before the said court, agreeably to the act of Congress in such case made and provided, and proved his residence and character by the oath of Nicholas Flinn, and being admitted by this court, took the oath to support the Constitution of the United States of America, and that he then did absolutely and entirely forever renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or soverignty whatsoever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland. This is therefore to certify, that the said James Kehoe has complied with the laws of the United States in such case made and provided, and is therefore admitted a citizen of the United States.

66 In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Cincinnati this 9th day of October, A. D. 1854.

[SEAL.] J. M. McMASTER,
Clerk Criminal Court, H. C.
By A. S. HORNNING, JR., *Deputy.*

In the Supreme Court of the District of Columbia, sitting as a Cour of Equity.

Deposition of Margaret Kahoe.—Filed Ja'y 10, '65.

EDWARD OWEN, ELLEN OWEN, JAMES KAHOE, Margaret Kahoe, and Philip Kelly, complainants,
vs.
ELLEN KELLY, widow of MILES KELLY, deceased, and James Muliqueen, defendants.
} Equity. No. 70.

Interrogatories to be propounded to Margaret Kahoe, of Covington, Kentucky, or wheresoever the said Margaret may be, as witness on behalf of the complainants in the above cause.

1st interrogatory. What is your name, age, occupation, and place of residence?

2d interrogatory. In what city or town, county and State
67 did you reside before moving to your present place of residence?

3d interrogatory. Are you, or are not, interested in the above cause? If yea, please state in what manner interested.

4th interrogatory. In what city, town, or place, county, and country were you born?

5th interrogatory. When did you come or arrive within the United States of America? Please state the day, the month, and year you arrived, to the best of your recollection.

6th interrogatory. At what port, city, and State did you arrive or land?

7th interrogatory. Have you or your husband been naturalized as a citizen of the United States? If yea, please state when, where, and in what court so naturalized.

8th interrogatory. Are you married or single? If married, please state to whom you are or were married. When were you married? In what city or town, county, and district or State were you married, and by whom were you married?

68 9th interrogatory. Where does your husband reside, and what is his name?

10th interrogatory. Are you, or are you not, a relative of Miles Kelly, deceased? If yea, please state what that relationship was or is.

11th interrogatory. Did or did not Miles Kelly, deceased, leave any child or children? If yea, please state their names, ages, and place of residence.

12th interrogatory. Did or did not the said Miles Kelly, deceased, leave any brothers and sisters of the whole blood surviving him? If yea, please state their names, ages, and residences; and if married, to whom are they married?

13th interrogatory. Did you or did you not come or arrive within the United States of America before or after the decease of the said Miles Kelly?

14th interrogatory. Are you, or are you not, acquainted with James Kahoe, Edward Owen, Ellen Owen, Philip Kelly, and Ellen Kelly? If yea, please state the relationship each of them are to you.

69 15th interrogatory. Do you know whether Philip Kelly, one of the complainants in the above cause, has ever been within the United States of America? If yea, state whether the said Philip Kelly has ever been naturalized and become a citizen of the United States, and where the said Philip Kelly now resides.

16th interrogatory. Do you know any other matter or thing touching the matters in controversy between the parties in this cause, which will benefit the complainants in this cause? If yea, please state them and set the same forth and at large in your answer as if you were particularly interrogated thereto.

WM. JNO. MILLER,
Solicitor for Complainants.

We agree to the taking of the deposition of Margaret Kahoe, according to the above interrogatories, subject to all exceptions touching her competency of witness, and to the interrogatories propounded.

ROBERT J. BRENT,
Solicitor for Ellen Kelly, Def't.
JOHN F. ENNIS,
Solicitor for James Muliqueen, Defendant.

70 *Cross-interrogatories.*

State how long you and James Kahoe have lived separate, and the reason for such separation.

2d X. State who was present when you were married.

R. J. BRENT,
For Ellen Kelly.

The solicitor for complainants objects to the first cross-interrogatory.

WM. JNO. MILLER,
Solicitor for Complainants.

Deposition of Margaret Kahoe, a witness sworn and examined the 4th day of January, A. D. 1865, at Troy, New York, under by virtue of a commission issue, out of the Supreme Court of the District of Columbia, sitting as a Court of Equity, in a certain cause therein depending and at issue, between Edward Owen, Ellen Owen, James Kahoe, Margaret Kahoe, and Philip Kelly, complainants, *vs.* Ellen Kelly, widow of Miles Kelly, dec'd, and James Muliqueen, defendants, as follows:

71 Margaret Kahoe of East Troy, New York, aged thirty-five years, being duly and publicly sworn pursuant to the directions hereto annexed, and examined as a witness on behalf of the complainants in the above-entitled cause, doth depose and say as follows :

First. To the first interrogatory she saith: My name is Margaret Kahoe; I am thirty-five years of age; I reside in the city of Troy, sometimes called East Troy, in the State of New York.

Second. To the second interrogatory she saith: In the city of Covington, Kenton county, State of Kentucky.

Third. To the third interrogatory she saith: I am; I am one of the plaintiffs or complainants.

Fourth. To the fourth interrogatory she saith: In the town of Pallas, in the county of Wexford, Ireland.

Fifth. To the fifth interrogatory she saith: About the last day of May, in the year 1850, to the best of my recollection.

Sixth. To the sixth interrogatory she saith: At the city of Baltimore, in the State of Maryland.

Seventh. To the seventh interrogatory she saith: My husband has been naturalized as a citizen of the United States, but I have not been naturalized. He was naturalized at Cincinnati, Ohio, in the year 1854; I don't know in what court.

72 Eighth. To the eighth interrogatory she saith: I am married to James Kahoe; was married to him by Rev'd Donlan, in the city of Washington, in the District of Columbia, on the 5th of September, in the year 1852.

Ninth. To the ninth interrogatory she saith: My husband resides in the city of Troy, sometimes called East Troy; his name is James Kahoe.

Tenth. To the tenth interrogatory she saith: I am; I am his sister.

Eleventh. To the eleventh interrogatory she saith: He did not.

Twelfth. To the twefth interrogatory she saith: He did; one brother and two sisters. The brother's name is Phillip Kelly, aged about thirty-four years; he resides in the town of Pallas, county Wexford, Ireland, and is married to Bridget Grace. The sisters are Ella Owen, wife of Edward Owen, about 29 years of age; she resides in the city of Washington, D. C.; and myself, the other sister, wife of James Kahoe, am 35 years of age, and reside at Troy aforesaid.

Thirteenth. To the thirteenth interrogatory she saith: I came before he died.

Fourteenth. To the fourteenth interrogatory she saith: I am; James Kahoe and Edward Owen were brothers-in-law of Miles Kelly,
73 deceased; Ellen Owen was his sister; Philip Kelly was his brother; Ellen Kelly was his wife; James Kahoe is my husband; Edward Owen is my brother-in law; Ellen Owen is my sister; Philip Kelly is my brother; and Ellen Kelly is my sister-in-law.

Fifteenth. To the fifteenth interrogatory she saith: I do; he never has been. He resides in the town of Pallas, county of Wexford, Ireland.

Sixteenth. To the sixteenth interrogatory she saith: I do not.

Cross-interrogatories.

First. To the first cross-interrogatory she saith: Nearly six months; he went to look up better employment than he had and better wages elsewhere.

Second. To the second cross-interrogatory she saith: Mary Kahoe and Thomas Brown and the clergyman who married us.

her
MARGARET × KAHOE.
mark.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 4th day of January, 1865, before, and signed and sealed by me.

[SEAL.] JOHN MORAN, *Commissioner.*

74 *Order setting cause for hearing, Feb.* 7, 1867.

OWEN *et al.*
vs.
KELLY *et al.* } 70. Equity.

On motion of Mr. Miller, solicitor for complainants, this cause is set for hearing on the bill, answer, and depositions.

By the clerk.

Certificate of the record of naturalization of Jas. Kahoe.—Filed Feb'y 13, '65.

STATE OF OHIO, *Hamilton County, sct.:*

I, Benjamin J. Horton, clerk of the Court of Common Pleas in and for said county, do hereby certify that among the records of the late Criminal Court of Hamilton county aforesaid, now in my legal custody, and in my office at the court-house in said county remaining, I find the following order of said Criminal Court entered on the minutes of the October term thereof, for 1854, to wit, on the 16th day of October, 1854, and clothed in the words and figures following, to wit:

"2,430. James Kahoe, an alien, bearing allegiance to the queen of Great Britain and Ireland, and who came into the United States under the age of eighteen years, now comes into court, declares his intention of becoming a citizen of the United States; proves character and residence by the oath of Nicholas Flinn, a citizen; took
75 the oath of allegiance and renunciation required by law, and was admitted to citizenship."

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court of Common Pleas aforesaid, at Cincinnati, this 26th day of July, A. D. 1864.

BENJ. J. HORTON, *Clerk.*
By EMIL HOFFMAN, *Deputy.*

[50-cent stamp cancelled.]

STATE OF OHIO, *Hamilton County, ss:*

I, Charles C. Murdock, presiding judge of the Court of Common Pleas for the first district, within and for the State of Ohio, the same being a court of law and record in and for the county of Hamilton, do hereby certify that Benjamin J. Horton is clerk of said court, and was such clerk at the time of making and subscribing the foregoing certificate by Emil Hoffman, deputy; and that said Emil Hoffman, who signed the same, was deputy clerk of said court, authorized to sign the same, and that the attestation of the said clerk is in due form of law and by the proper officer.

In testimony whereof, I do hereto subscribe my name, at Cincinnati, this 26th day of July, A. D. 1864.

[SEAL.] CHAS. C. MURDOCK,
Pres. Judge.

[5-ct. int rev. stamp, cancelled.]

76 STATE OF OHIO, *Hamilton County, ss:*

I, Benjamin J. Horton, clerk of the Court of Common Pleas within and for said county of Hamilton, do hereby certify that Charles C. Murdock, whose name is subscribed to the foregoing certificate, was, at the time of subscribing the same, presiding judge of the Court of Common Pleas for the first district, within and for the State of Ohio, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I, the clerk aforesaid, have hereunto set my hand and affixed the seal of the said court, at Cincinnati, in the said county, this 26th day of July, A. D. 1864.

[SEAL.] B. J. HORTON,
Clerk Court of Common Pleas, Hamilton County, O.

[5-ct. stamp U. S. rev. cancelled.]

Exceptions of Ellen Kelly.—Filed Feb'y 13, '65.

OWENS *et al.*
vs.
ELLEN KELLY. } No. 70. In equity.

1. The above defendant, Ellen Kelly, excepts to the certificate of naturalization, returned with the deposition of James Kahoe, because the same is not sufficient or competent evidence of the
77 supposed naturalization of said Kahoe.

2. And she also excepts to any allowance of any portion of the proceeds of sale (except the proceeds of lot 25, in sq. 625) to James Kahoe and wife, or either of them, because no title is shown in them, or either of them, to said proceeds.

3. She also excepts to any allowance of any portion of the proceeds of sale (except the proceeds of lot 25, in sq. 625) to Edward Owen and his wife, Ellen, or either of them, because no title is shown in them, or either of them, to said proceeds.

4. She also excepts to the auditor's allowance to her of only a dower interest in said proceeds of sale, except the proceeds of lot 25 aforesaid, because she claims said proceeds as widow of Miles Kelly, under the act of Maryland in such case made and provided, and in force in this District, for the want of heirs-at-law of said Kelly competent to take.

R. J. BRENT,
For ELLEN KELLY.

Order of reference to auditor.—Filed Feb'y 14, '65.

OWENS *et al.*
vs.
KELLY. } No. 70. In equity.

Ordered this 14th day of Feb., 1865, that this case be referred to the auditor, with instructions to take further evidence at the
78 instance of either party, and report all the facts to this court, and make distribution between the parties, or to such of them as appear entitled.

By order of the court.

79 *Auditor's 2nd report.—Filed April* 14, 1865.

OWENS and OTHERS *ag't* KELLEY. } No. 70. Equity.

By the order of the 14th Feb'y, 1865, the above case is referred to me to take further evidence, at the instance of either party, and to report all the facts to the court, and make distribution between the parties, or to such of them do appear entitled.

I understand the expression "as appear entitled" to go beyond the mere order to state the trustees "account," and to require an examination of the question of right as to who is entitled to the real estate of the late Miles Kelley. I have found the question complicated, and submit with deference the result, with the reasons for the inferences and conclusions I have found more at length than the mere statement of the account would have justified.

I have taken further evidence, namely, the depositions of Mrs. Kelly, Mrs. Owens, Miss Ward, Mr. and Mrs. Mulcrae, Patrick Allen, and Mr. and Mrs. Malone, which are returned with this report.

The facts appear briefly to be these:

80 Miles Kelly was an alien, born in Ireland. He came to the United States in 1848. He was naturalized the 8th May, 1865; and he died intestate, the 2nd March, 1862, without children, or the issue of such. He left a widow, a brother, and two sisters, all foreign born, who are parties to this suit, the brother and sisters being of the whole blood. The brother is in Ireland, the two sisters in this country. It was agreed before me, by Mr. Brent and Mr. Miller, that he had no farther, mother, or any other brothers or sisters, or collateral relations living than those named, and that his father and mother were aliens, and had never been in this country.

Miles Kelley purchased lot No. 25, on G street, in square No. 625, before his naturalization; the deed is made in his own name, and is dated the 20th May, 1853. The other lots, of which he died seized, were purchased and conveyed to him by deed after his naturalization. The deed for the east half of lot 20, square 625, is dated the 20th Dec. 1855; of lot 1, square 677, 21st Aug., 1858; and of a moiety of lots No. 3, 4, 5, 6, 7, and 8, in square 776, on the 29th July, 1858. These latter lots were purchased in conjunction with Jas. Mulquin, who owned the other moiety.

81 All the lots, except 1, in square 677, have been sold under the decree of the court, without prejudice to the rights of the parties, who are allowed to claim on the fund.

The proceeds of the moiety of the lots in square No. 776, belonging to Mulquin, have been distributed; the distribution forms the subject of the first report of July, 1864, and the question now comes up as to the distribution of the residue of [of] the funds, the estate of Miles Kelly, and who are entitled thereto.

They are claimed by his brother and sisters, as heirs, on the one hand, and by his widow on the other.

They were all aliens, having all been born in Ireland.

His brother Philip, one of the complainants, still resides in Ireland, never having been in the United States.

The widow, Ellen Kelley, the defendant, came to this country in 1837, and has remained here ever since. She states her age at the time of her arrival to have been 14 or 15. She was married to Miles Kelley in 1853, Jan'y 2nd.

Mrs. Kahoe, before Marg't Kelley, a sister, and one of the
82 claimants, and compl'ts arrived in this country in May, 1850.

My inference from the evidence is, that she was a minor at the time she arrived. She states in her deposition that she came to this country the last of May, 1850. Her deposition was made on the 4th Jan'y, 1865, wherein she gives her age as then 35, which would make her about 20 years and 4 months at the time of her arrival. She also has remained in the country ever since, and married her present husband the 5th Sept'r, 1852. He was born in Ireland, and naturalized the 9th October, 1854.

My conclusion as to the time Mrs. Owens, the remaining sister and complainant, came to this country is that she arrived here in Dec'r, 1856. There is much confusion in the account she and Mrs. Kelley give of the time of her arrival; (dep., p. 1,) but such is my inference from the whole evidence. Mrs. Kelley says that her husband went to Philadelphia in Dec'r, 1857, for his sister, when she had just landed from Ireland, and that he brought her to their house in this city on the 12th Dec'r, 1857. And she adds that she thought, though she was not sure, it was the Dec'r before Mr. Buchanan's inauguration, which would make her arrival Dec'r, 1856, as that event took place in March, 1867. Mrs. Owens, in her deposition, says that she came here on the 12th Dec'r before Mr. Buchanan's inaugura-
83 tion, and that she attended it. But in her first deposition, taken the 17th Dec'r, 1864, she says she arrived about seven years prior to that date, which would make it Dec'r 1857; and in her second deposition, taken the 17th Feb'y 1865, she says that she was 21 years of age when she left home, and that she was then, Feb. 7, '65, 26 or 27 years of age, which would make her arrrival Dec'r 1858. Mrs. Kelley says she could not have attended the inauguration, because she was then in a condition in which she could not appear in public. From their statements, therefore, I do not think any reliable conclusion could have been formed as to the true period of Mrs. Owens' arrival; (p. 11, 12,) but Mr. and Mrs. Mulcare were afterwards introduced as witnesses on the part of Mrs. Owens, and they both state that they attended Mr. Buchanan's inauguration, and that Mrs. Owens, then Miss Ellen Kelley, was present at it with them. This is confirmed by the testimony of Patrick Allen, (p. 13,) afterwards examined on Mrs. Kelley's behalf, (pp. 20, 22,) as well as by Mr. and Mrs. Mahone, produced by Mrs. Owens. Therefore, I fix the time of her arrival here to have been on the 12th Dec'r, 1856; both she and Mrs. Kelly agree it was on a 12th of December. She has resided here ever since, and was married to Edw'd Owen the 24th Dec'r, 1861; so that if her arrival was the 12th Dec'r,

84 1856, she had been in the country five years and 12 days before her marriage. Edw'd Owen was also a foreigner, and was naturalized the 2nd June, 1836.

From the testimony of Mrs. Owens and Mrs. Kelley, there would be some difficulty in arriving at a correct conclusion as to the age of Mrs. Owens when she arrived. Mrs. Kelley says she told her she was 27 years of age when she came. Mrs. Owens says, "I was 21 when I left home—20 or 21 years of age when I left home. I cannot tell whether I was 20 or 21 when I left home. I never to my knowledge told Mrs. Kelley I was 27 years of age." But James Mahone, page 22, says he is at least seven or eight years older than Mrs. Owens, and that he was then 46 or 47 years of age. That would make Mrs. Owens 38 now, and if she came in 1856, 28 years of age when she came. And yet her sister, Mrs. Kehoe, was then but 27 years of age, and she was older than Mrs. Owens, and there were five other children between them. If I felt obliged to come to any conclusion as to her age when she arrived I should find she was above 21. But it would be very doubtfully found. If, however, the view I take of the act of 1855 is correct, her age at the time of arrival is not material.

None of these women, either Mrs. Kelley, the widow, or
85 Mrs. Kahoe, or Mrs. Owens, the two sisters, ever made any declaration of intention to become citizens, and were never naturalized in fact. They rely for their right to be regarded as citizens, and their capacity to inherit, upon the fact of their having married citizens.

Upon these facts and inferences (believed to be correctly stated and deduced) the question recurs, who is entitled to the property of which Miles Kelley died seized?

As to the lot (25, square 625) which vested in him by deed prior to his naturalization, our local act of the 19th Dec'r, 1791, and Spratt's case, (1 Peter, 343; 4 Peter, 393,) settle the question. The 6th sec. of the act of '91 permits foreigners, by deed or will, to take and hold lands in this District, and to transmit the same by gift or descent to their foreign relations the same as if they were citizens; and Spratt's case limits the right to such lands as were acquired by deed previous to naturalization, and excludes the foreign heirs from such as were acquired afterwards, as well as such as were purchased before naturalization, but not conveyed untill after.

The lot 25, therefore, having been conveyed to Miles Kelley on the 20th day of May, 1853, his naturalization being on the 8th
86 May, 1855, belongs to all his relatives, to his brother Philip and sisters, Mrs. Kahoe and Mrs. Owens, subject to the dower therein of Mrs. Kelley, his widow.

As the investigation was about closing, Mr. Brent made a new point for the widow, namely, that this lot was purchased by Kelley with money that belonged to his wife before marriage; that he promised to secure the lot to her, and therefore in equity it was hers.

The fact depends upon the additional testimony of Miss Ward and Mrs. Kelley, at pages 14, 18, of the depositions.

The deed for the lot was taken by Miles Kelley to himself in his own name, and the testimony to sustain the trust is parol, and introduces all the dangers against which the statute of frauds was intended to guard. But aside from the objections to the character and source of the evidence, there can, I think, be no doubt that this money became in law, by virtue of the marriage, the husband's own money, and if this lot was purchased with it, it was bought with what was his own. What circumstances are there to raise this trust for the wife? The money was his own. There was no contract before marriage as to her separate property, and no consideration afterwards moving from her. His promise to secure the money or the property to his wife, seems to have been a mere voluntary promise, made after marriage. In Dent *v.* Brooks, 1 Ma. Ch. Dec., 523, cited by Mr. Brent, the wife agreed to part with her maiden real estate, of which she had the title and the entire control, upon the promise of the husband to invest the proceeds in other real estate, and it was partly invested in the lands sought to be followed.

87

I should, therefore, upon the merits report against this trust set up for Mrs. Kelley.

But the claim is not set up in the pleadings. The bill is for the sale of the property and division of the proceeds. In her answer the widow assents thereto, claiming her dower right, and also as heir, if the complainants were not such. There is no claim made for this lot or its proceeds, on the ground that it was purchased with her money earned before her marriage; on the contrary, it appears to be admitted in the exceptions filed in Feb'y last, on her behalf, to the complainants' claim, that they were entitled to take this lot, and that it was the only one they were entitled to. I so understand the expression. She excepts to any allowance of any portion of the proceeds of sale, (except the proceeds of lot 25, square 625,) to James Kahoe and wife, because no title is shown in them and the same ar to Owens and wife.

88

On both grounds, therefore, I report that Mrs. Kelley is not entitled to this lot, or its proceeds, and that they are for distribution among all Kelley's heirs, foreign as well as domestic, including the widow for her dower right.

Who takes the residue of the property acquired by Kelley after naturalization, is a more difficult question.

The acts of the 14th April, 1802, and the 26th May, 1824, require a residence of five years and a declaration of intention of two years, previous to the application by adult aliens, female as well as male, to entitle them to admision as citizens. The act of 1824 dispenses with the previous declaration of two years in the case of those who were minors at the time of their arrival in the country; but there is no dispensation in their case any more than of an adult of a residence of five years previous to their admission. The act of the 10th Feb'y, 1855, c. 71, s. 2, provides that "any woman who might lawfully be naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deamed and taken to be a citizen."

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89 The case depends upon the true understanding of this last act.

On the one hand, for the widow, it is said that marriage under this act by an alien woman to a citizen is not alone sufficient to entitle her to the rights of citizenship, but that she must still have resided five years in the country before marriage, and must also have declared her intention to become a citizen two years previous to marriage; that Mrs. Kehoe and Mrs. Owens were adults when they arrived; had never declared their intention, and had not been in the country five years when they were married; that the widow of Kelley came to the country in infancy, and therefore no preliminary declaration in her case was required; and that she had resided in the country more than five years when married to him.

On the other hand, for the two sisters, it is urged that under this act of 1855, it was not necessary for an alien woman to have resided five years in the United States, nor to have declared her intention two years previous to marriage, but that marriage to a citizen and remaining in the country were sufficient; that the two sisters, or certainly Mrs. Owens, arrived in the country five years before marriage; that Mrs. Owens was then in her minority; that both of them married citizens, and have remained here; and that the widow,
90 Mrs. Kelley, is not even entitled to dower, Kelley not being a citizen at the time she was married.

If the period when the descent was cast, the death of Miles Kelley in 1862, could be taken as the period for ascertaining the rights of the parties, they might all perhaps be deemed entitled according to their respective rights. But it seems exceeding doubtful whether any of them are citizens, and whether all of them do not still remain aliens.

The conclusion, however, to which I have come is, that Mrs. Owens is entitled to the proceeds of these after-purchased lands as heir, and free from the widow's dower.

There are two modes now in which females may be naturalized, the usual one by application to the courts and five years residence, and two years declaration of intention; and the other, by marrying a citizen. It could not have been intended, I think, by the act of 1855, to dispense with the five years residence before marriage, and establish that an alien woman coming into the country one day and marrying a citizen the next should so instanter become a citizen. The expression, "who might be nat-
91 uralized under the existing laws," precludes that idea, nor could it have been ment, that all the forms which the existing laws required a woman to observe before marriage to obtain the rights of citizenship, should have been observed by her at the time of her marriage to a citizen, or should be observed afterwards. If so, of what use was the act? It must have been meant by the expression who might be naturalized, to preserve the substantive requirement of the former laws, viz., the five years' residence, and to waive in favor of the feme, by her act of marrying a citizen, all the forms previously necessary to obtain the right, that she should not then or afterwards be required to go into court to pass through these

forms. Is it not the five years' residence in the country, according to the act of 1802 and 1824, that gives the right to naturalization, inchoate on the completion of such residence, to be perfected by the observance of certain forms? And are not the oath, the declaration of intention, renunciation of the original allegiance, and proof of character, the mere forms according to those acts, for obtaining such right substituted by marriage, past as well as future, by the act of 1855, as to a feme, with one who was a citizen at the time of marriage? What could or can be more emphatic evidence of an intention on the part of a woman to become a citizen of the country, than her union for life with one who was such? The act meant to confer some benefit or grant some dispensation in favor of alien women who had married or might marry citizens, and they must be presumed to accept what it was to their interest to take.

92

It is proper to refer, in illustration to the British statute, from which our act of 55 appears to have been framed. That act, 7 and 8 Vic., c. 66, s. 16, Aug. 6, 1844; pt. 22 law jour., 3, p. 133, 13th vol., new series, has not the words "who might lawfully be naturalized under the existing laws, and no previous residence is required; it is in these terms, "That any woman married, or who shall be married to a natural born subject, or person naturalized, shall be deamed and taken to be herself naturalized, and have all the rights and privileges of a natural born subject."

Under this statute marriage alone would seem to be sufficient, but our legislature by the introduction of the words, "who might be lawfully naturalized under existing laws," meant some qualification; and yet they could not have meant that every form previously required should be shown, at the time of marriage, to have been complied with, for such a construction would leave things just as they were; the act would affect nothing, but would be a mere abortion. But, by requiring the five years' residence, and deeming the marriage equivalent to an observance of the forms, and accepting the union of an alien woman who has resided here five years with a citizen of the country as evidence, and a declaration of her intention thenceforth to become a citizen, the substance of the former laws would be preserved, and effect given to the act of '55.

93

The Burton case, recently decided in New York, sustains this idea, that residence in the country is necessary, under the act of '55, to confer citizenship. The wife in that case had never resided here, and the Court of Common Pleas held she was not entitled to dower. The Court of Appeals, it is understood, reversed the judgment, it is presumed, upon the ground on which it was put in the brief, that the domicil of the husband must be deemed the domicil of the wife, and though actually absent, she was constructively present during the whole period of his residence, which had been much more than five years.

No question of that kind arises in this case, because the residence of the women, as far as it extends, has been actual. But the case affirms the necessity of residence, though not, it is presumed, of any declaration of intention to become a citizen.

94

The alternative consequence is escheat, which is not favored but is odious, especially under our institutions, and any reasonable construction or course will be adopted to escape it. (3 Vey, 170, Walker *v.* Denne,) where equity refused to aid the crown, and to direct money to be laid out in land for the purpose of enabling the sovereign to claim by escheat; and our own act of descents of '86 goes so far as to make the widow heir to the husband, to avoid the consequence. There are similar statutes in nearly all the States.—(Virg'a Act of '79, c. 13, s. 3.) And it must have been because of the odiousness of the rule and the anxiety of courts to evade the consequences of it, that trusts have been held not to be the subject of escheat, and that the Supreme Court decided the case of Craig *v.* Leslie, (3 Whea., 563,) holding that an alien cannot hold against the State lands devised to him directly, but that he may take and hold and dispose of the proceeds of such as are devised in trust to be sold for him.

If the views here intimated, that residence is of the substance of the requirements, and the declaration of intention one of the
95 mere forms waived or substituted by marriage, can be received as the time understanding of the act of '55, then testing the rights of these parties by [by] it as to these after-acquired lands.

His brother Philip is out of the question; he still resides in Ireland, and is an alien.

Mrs. Kehoe would seem to be in the same predicament; she had not been in the country five years at the time of her marriage, or of the passage of the act of 1855. She came here at the end of May, 1850, and was married in Sept., 1852, and the act was passed the 10th Feb'y, 1855. Nor was her husband a citizen at the time they were married; he was not naturalized until the 9th Oct., 1854.

If the time of marriage or passage of the law be the period for ascertaining her rights, she had no inheritable blood when her brother died, is still an alien, and must be excluded.

But if the period be when the descent was cast, then she would be entitled as at the time of her brother's death, she was a "woman (then) married to a citizen," and was a minor when she arrived.

I incline, however, to think and report that Mrs. Owens,
96 her sister, is solely entitled. Her case arises after the act, and comes under the prospective clause, "a woman who shall be married to a citizen." If my conclusion of fact, that she came here the 12 Dec. '56, be correct, she had been in the country five years and twelve days at the time of her marriage with Mr. Owens, then a citizen; she arrived here the 12th Dec., '56; was married the 24th Dec., 1861; and Owens was naturalized the 2d June, 1836. And if the view above expressed of the act of '55 be correct, that it was ment to waive as to a feme by her marriage with a citizen all the form that had previously been required to consummate her right to citizenship, which five years' residence gave, then Mrs. Owens becomes entitled to the whole of these after purchased lots.

But if it be that she was above 21 when she arrived in the country, and not then a minor, and her declaration of intention to become

a citizen made two years previous to her marriage, was as necessary as the five years' residence, then Mrs. Owens would not be a citizen when the descent was cast, and would be excluded, and the property may escheat, unless the widow, Mrs. Kelley, can intercept it.

97 And as to her right—she came to the country in 1837, when a minor, has resided here ever since, and was married to Kelley in Jan'y, 1853, who was not naturalized until, the 8th May, 1855. It is objected by the parties who have filed this bill as heirs of Miles Kelley against her, that she is not entitled even to dower, because she was not married to a citizen when the act of '55 was passed. The fact appears to be so; the act was passed the 10th, Feb'y, 1855; he was naturalized the 8th May, '55; and she was married in Jan'y, 1853. Mrs. Kelley has not been naturalized by application to any court, and her husband was not a citizen at the time of her marriage. I can, therefore, perceive no ground on which she can be admitted to dower in these after-acquired lots, unless the period of her husband's death can be adopted as the period for ascertaining the rights of these parties, or unless the complainants, having filed this bill as heirs against her as widow of Miles Kelley, are estopped from relying upon her alienage as an exclusion from dower; but as I cannot adopt either of these views, I am constrained to report, that she has no dower right in these after-acquired lots.

98 I have distributed the proceeds of lot 25, in square 625, among the widow and all the heirs of Kelley. To the widow, her age being between 40 and 45, I have assigned two-fifteenths of the net proceeds for her dower, and the residue to the three complainants, Phillip Kelley, Mrs. Kehoe, and Mrs. Owens, equally. The net proceeds of all the other lots I have assigned to Mrs. Owens. If the court should deem Mrs. Kelley entitled to dower therein, it will be to deduct 2-15ths therefrom. And if it should be held that Mrs. Kehoe is also entitled to share in these lots, one half of whatever sum goes to Mrs. Owens will have to be deducted and assigned to Mrs. Kehoe.

I append hereto the notes with which I have been favored by the counsel on both sides, but, as will be perceived, I have not been able to agree entirely with either of them.

Schedule O shows in detail the trustees account, and the distribution according to the principles above, and the sums due to each. The account had to be re-stated. That of July last was necessarily in some respects conjectural. I have assumed that the deferred payments of the purchase-moneys and interest have been paid. If not, when they are, the amount that will be payable to Mrs. Owens will be $1,500 85; to Mrs. Kehoe, $121 87; to Philip Kelley, $21 87; and to the widow, $60 86. The expenses are apportioned according to the interests of the parties and the amounts due to them respectively.

10 April, 1865.

WM. REDIN, *Aud'r.*

99 *Schedule O.*

1864.				
Feb. 6.	Purchase money of lot 7, sq. 776, Alexander			430 00
	Purchase money of lot 8, sq. 776, Alexander			440 00
	Purchase money of lot 3, sq. 776, Norris			500 00
	Purchase money of lot 4, sq. 776, Mrs. Kelley			570 00
	Purchase money of lot 5, sq. 776, Mrs. Kelley			440 00
	Purchase money of lot 6, sq. 776, Mulqueen			410 00
				$2,990 00
	Interest on Norris	15 03		
	Interest on Mrs. Kelley	31 95		
				46 98
				$2,836 98
	Purchase money of lot 25, sq. 625, Mrs Kelley	455 00		
	Purchase money of east ½ 20, sq. 625, Quill	226 00		
	Interest on Mrs. Kelley's	13 59		
	Interest on Quill	6 75		
				701 34
				$3,538 32
	By allowance for expenses, viz:			
	Auctioneer and advertising	94 50		
	Taxed costs	39 65		
	Taxes	6 26		
	Publishing order of ratif'n sales	7 50		
	Trustees com'n to clerk on 1,805 36, 18 05; to trustees, 118 09	136 14		
	Solicitor's extra fee	25 00		
	Advertising lot 1, sq. 677	18 38		
	1st. audit	26 25		
100	Com'rs taking testimony, Beale	5 05		
	Com'rs taking testimony, Woodward	18 60		
	2d audit and report	58 12		
				435 45
				$3,102 87
	The half interest of Mulqueen in lots in sq. 776	1,418 49		
	Less half the proportion expenses	121 07		
				1,297 42
				$1,805 45

Lot 25, sq. 625, purchased before naturalization		455 00	
Interest on the def's pay't thereof		13 59	
		468 59	
Less proportion of expenses		42 12	
For division		426 47	
To Mrs. Kelley for her dower.	60 86		
To Philip Kelley	121 87		
To Mrs. Kehoe	121 87		
To Mrs. Owens	121 87		
			426 47
			$1,378 98

The lots purchased after naturalization, viz:

Half of those in sq. 776	1,418 49	
E. ½ 20, sq. 625, and interest on def's pay't	232 75	
	1,651 24	
Less proportion of costs and exp's	271 74	
	1,379 50	
Fractions	52	
For Mrs. Owens		1,378 98

10th April, 1865.

WM. REDIN, *Auditor.*

101 *Deposition of Ellen Kelley, taken before auditor.—Filed Ap'l 14, 1865.*

I am the widow of Miles Kelley, and reside in Washington city. I came to this country from Ireland, in 1837; 9th of August, 1837. I have remained in this country ever since; I have never left it. I was fourteen, going into fifteen years of age when I came to this country. when I arrived I was in my fifteenth year. My husband died the 2nd day of March, 1862. I knew Ellen Owen; she came to my house and my husband paid her passage. She came to this country the 12th day of December, 1857. She told me then, at that time, that she was twenty-seven years of age. I have seen Mrs. Caho before her marriage. I have seen her here. I was not married at that time, nor was she. I was not then married. I saw her in Washington. I was not then keeping house; neither of us was then married. I should think from her appearance (objected to by Mr. Miller) that she was about thirty odd years of age. It was about a year before I was married; it was, I think, about 1852.

Cross-examination.

I arrived in New York city. I had a guardian with me, a gentleman and sister, who left me with my aunt. Their names were Mr. George Berney, and his sister, Elizabeth Berney. I have not calculated how old I am now. I said I was not far from thirty years in this country. I should think I am about forty-two years old.
102 Mrs Owen arrived in this country the twelfth day of December, 1857. I know it because my husband paid her passage, and I worked for it, and she has not paid for it yet. That is why I recollect it. That is the reason. I do not know who was President of the United States at the time she came. It was in December; so it was before an inauguration. I do not know whether it was before the inauguration of Mr. Buchanan, but I think it was. I have other reasons why it is impressed on my mind that she came to this country the 12th December, 1867. The reason I know Mrs. Caho came to this country in 1852 is, I think it was because I became acquainted with her in [Mar-] Margaret Ward's house. I was acquainted with my husband previous to that, and he in that year, he introduced me to his sister Margaret Caho, in Margaret Ward's house. I think Mrs. Caho was thirty odd years of age then. I had frequent conversations with her; she never told me when she come to this country. I had caus to think she was that old, because my husband told me she was that old; because my husband told me she was the oldest of the entire family, (objected to by Mr. Miller,) older than my husband. He had frequently told me so. I have never seen Mrs. Caho since her marriage. I should think Mr. Buchanan had not been inaugurated
103 when Mrs. Owens came to this country, but I do not know. My husband went on to Philadelphia after his sister Ellen, (now Mrs. Owens.) My husband told me just before his death, that he thought my age was four years more than his. That is all I could ever get from him. You can figure out what my age was when I was married.

Deposition of Margaret Ward, taken before auditor.—Filed April 14, 1866.

Margaret Ward. I never saw Mrs. Owen untill this day. I may have seen her but not to know her. Mr. Kelley brought his sister Margaret to my house. Our house was the first house that Margaret, now Mrs. Caho, ever put her foot into in Washington. I think that was the last of July, or the first of August; she had been month in this country. I cannot tell what year it was. She had been hired out near Baltimore; she said she had. She must have been over thirty years of age. She was very rough in appearance and shrimped in the face. If she was anything she was over thirty years of age. I never heard her say how old she was. I never heard Miles Kelley say how old she was. I have known Ellen Kelley a great many years; when the cholera raged in New York, I think it was in 1862, and she came on here. I have known her in this city maybe twelve or fifteen years. I have known her as a sister, very intimate. I was her banker;

she was fully grown when I first knew her. She never ap-
104 peared to verry young. She was delicate and genteel; she was pock-marked. I cannot state how long she and Miles Kelley have lived together as man and wife.

Cross.

I have been in this country since the 18th of September. 1820. I never saw Mrs. Owens before to-day. Mrs. Caho when I first saw her looked shrimped in the face, not delicate but strong. She was sick at my house. I do not know how long she had been in the country when I first knew her. In Ireland girls of 18 and 19 years look large, stout, and full grown; they look beautiful. I have many a time seen ladies that seemed four or five years older than they really were. I know nothing about Mrs. Kelley's age; I never bothered myself about it. I cannot tell how long since I saw Mrs. Caho; I have not seen her since her marriage; her husband on her marriage took her to Cincinnati and I have not seen her since. My judgment of Mrs. Ellen Duffay (now Mrs. Kelley) was that she was older than she really was; I suppose she was over twenty years of age; she was a nice, genteel girl. There are no ill feelings on my 'part towards Mrs. Caho, not the least in the world; I said nothing about Mrs. Caho not paying me for my attention when Mrs. Kelley asked me to come here.
105 I counsell with her about everything. I live with myself and my sister in this city. I do not know when Mrs. Kelley became acquainted with Mrs. Caho; but I think it was at my house; Mrs. Caho stayed at my house all the time she was sick. Mrs. Kelley did not board at my house but visited there.

Mrs. Kelley re-called.

Mr. Brent re-calls Mrs. Kelley. which is objected to by Mr. Miller on the ground that Mr. Brent had said he had closed her testimony.

Have you any knowledge of the physical condition of Mrs. Owen on the 4th of March after she came here?

Answer. I am a married woman myself. She was in the family-way when she first come to my house. The child was born on the first day of May, and I was present. The child lived untill the 12th of May; she told me she was in the family-way. It was the same year she came here. It was the May after she came here.

Re-cross-examination.

To my knowledge I have never known women about a few days before confinement. If a woman once conceals this act she don't generally expose herself. I have seen women at the washtub and going about for a short time before the birth, but they were married;
I have given birth to children; I have, up to a short time be-
106 fore the birth of a child, attended to my household duties. I have gone out. I do not know whether she went to the inauguration of Mr. Buchanan, but I know she was concealed in the house for several months locked up in a room; I carried her victuals to

her, and I locked her up. It must have been two or three months that she was locked up previous to the birth of the child. I locked her up to conceal the shame of her coming to the country in that condition without being married; I did not want anything to do with her, and when she came to the house I did not want to see her. This was since the death of my husband ; I have not said I disliked her. I did say I thought she had no right to come and trouble me about my husband's property. I never spoke in unbecoming terms to Mr. Miller of her.

Mrs. Ellen Owen.

My first name is Ellen. I am married to Edward Owen. I come to this country on the twelfth of December previous to the inauguration of Mr. Buchanan as President of the United States. I arrived in Philadelphia ; my brother, Miles Kelley, came to Philadelphia after me. I am a whole sister of Miles Kelley ; we had the same father and mother; after I left Philadelphia I came to Washington city.

I have resided in this country, United States, ever since.

107 I was married to Edward on the twenty-fourth day of December, 1861, in this city. I do not know whether my brother left any children or not. I never, to my knowledge, told Mrs. Ellen Kelley that I was twenty-seven years of age. I am interested in this suit as the sister of Miles Kelley. To the best of my knowledge I cannot tell my age ; as far as I can state from my knowledge and belief I am now between twenty-six and twenty-seven years of age.

Cross-examination.

By Mr. Brent:

I know I come to this country in December—the twelfth of December. I was at the inaugauration of Mr. Buchanan. I was not at the last inauguration; I saw Mr. Buchanan inaugurated at the Capitol in front on the east side; I fix the twelfth of December; I can count; I can tell the day I landed; I made no memorandum of the day I landed; I carry it in my memory—kept it in my memory. My brother Philip is the oldest, older than I am; I was the youngest. Miles was older than I; Miles was younger than Philip. There were two children between Miles and me; they are dead; I can't say how much older Miles was than me; I do not know what are my birth-days. From

108 what I heard of my age before I left home and the time I have been here, I judge I am between twenty-six and twenty-seven years of age; I was twenty-one when I left home; twenty or twenty-one years of age when I left home. I cannot tell whether I was twenty or twenty-one when I left home ; my parents told me when I left home how old I was ; they did not tell me my birth-day. I do not know the age of my mother; I cannot tell how old she was when I left home; I do not know how old my sister, Mrs. Caho, is. Mr. Owen was my first and only husband. I have no children living; never had any living children. Mrs. Caho has children, has one child living. Mrs. Caho is the oldest of our family; I cannot say how old she is; there were two children between me and Miles ;

four between Philip and me; two grew up and two died young; all four are dead; Philip was next to Mrs. Caho. I do not, from my knowledge, know how old Miles Kelley is; I do not know how old Philip is; I do not know the age of any but my own, I can't state; I do not know Philip's age; I do not know that I did state in a former examination that Philip was about thirty-six years of age; if it is so stated it is a mistake. The witness being asked if she came here in the December before the inauguration of Mr. Buchanan, as you now state,
109 how came you to state in a former examination that you had been here about seven years; said, I have been here about seven years. The question was not put to me in my former examination as to what day I arrived. The question, when did you arrive in the United States of America, was put to me.

I did not state the day of my arrival, because I was not asked to state the day. I was here at the inauguration of Mr. Buchanan. I arrived here on the 12th of December previous. To the best of my knowledge, we arrived at Philadelphia between the 9th and 11th of December.

Re-cross examination.

Mr. Brent asks the witness if she was in a condition fit to go to the inauguration in 1857.

I was in a good state of health; I was not a married women then.

The witness refuses to state whether or not, about the first of May, or in the spring of 1857, she gave birth of a child.

(The question when put was objected to by Mr. Miller.)

FRIDAY, 3*rd March*, 1865.

Ellen Kelly re-cross examined.

By Mr. Miller:

Mrs. Owen had a child born at my house. I attended her;
110 she had no physician with her. I went with her once to see a doctor about Mrs. Owen; I went to see him soon after Mrs. Owen came here. It was Dr. Richards; can't tell how soon after she had come to this country; said she was in family way; she came to my house; was in December, I think in 1857. I do not know whether she was at the inauguration; I know nothing about any inauguration. She was kept locked up for two months. I locked her up; I can't say how long she was locked up; it was more than a week; it was not three months; I did not say it was three months. My husband wen to Philadelphia for Mrs. Owen before the twelfth of December. I do not know how long he remained there. My husband and she came on together; she remained at my house. I do not know how long; I think untill about June. The doctor gave her some medicine; he was our family physician. I did not see him paid anything; I do not know that he charged any thing. It was Dr. John Richards; he is dead.

Ellen Owen re-examined.

By Mr. Miller:

Mrs. Walter (Kelley) locked me up in a room so that I should not steal her money; said I had stolen money; I do not know how long I was locked up; locked up only at night; got up in the morning and went about as usual; I went into the room at night, and then she locked the door. She furnished me with food when I was sick with the chills and fever; I can't tell how soon after I came here; it was say five months after I came here.

111

Re-cross.

After I left my brother Mrs. Kelley hired me out to a person living on New York avenue; I do not recollect the name of the lady I lived with; I lived there three months; I then went back to my brother, Miles Kelly; I never went to New York; never said I did; I had not a child at that time; I deny it.

Maurice Mulcare's testimony.

Maurice Mulcare states as follows:

1. How long have you known Mrs. Owens?

Answer. The first of my knowing her was 4th March, when Mr. Buchanan was inaugurated. I knew her as Miss Kelly then.

2. Who introduced her to you?

Answer. By Miles Kelly and his wife

3. Did you ever board with Miles Kelley?

Answer. I did.

4. Did Miss Kelley, now Mrs. Owen, live there at that time?

Ans. She was there.

5. Did you visit there before you went to board?

Ans. I did; sometimes once a week, and sometimes twice, and some weeks not at all. I never knew her to be locked up in a room; she was never in the family way to my knowledge; was verry intimate with Miles Kelley; never heard Kelley or his wife state she was in the family way. I went to board with Kelley some time in June, after the inauguration. I visited there frequently between the 4th March and June. I am a married man now, but was not then. I frequently met Miss Kelly there.

112

Cross-examined.

I was introduced to her at Miles Kelly's house.

Testimony of Mary Mulcare.

I was acquainted with Mrs. Owens before her marriage, (Miss Ellen Kelly;) my first acquaintance with her was on the 4th March, the day Buchanan was inaugurated; I saw her first on that day at Mrs Kelley's house, who told her to go and dress and go out with

Mr. and Miss Mulcare. She and I, and my brother attended the inauguration. Never at the house before, and but once afterwards.

The
MARY × MULCARE.
mark of.

Test: W. R.

Mrs. Owens.

Mr. Brent calls Mrs. Owens, and askes her whether she ever took the oath under the naturalization laws of the United States.

113 She answers that she never did, to the best of her knowledge.

her
ELLEN + OWEN.
mark.

Witness:
WM. JNO. MILLER.

THURSDAY, *March* 30, 1865.

Deposition of Pat. Allen.

Patrick Allen, summoned on behalf of Mrs. Kelley, being sworn by the auditor, says: I am a labron in the Quartermaster General's Office. I boarded in Miles Kelley's house, to the best of my recollection, eight or nine years ago. I kept no memorandum, but it was, to the best of my recollection, eight years ago; to the best of my recollection I boarded there three or four months; I went there in the fall. I know Ellen Kelley, now Mrs. Owen; she lived at Miles Kelley's while I was there; she came there while I was boarding there; she came green from the old country; whether she had stopped in New York or not, I don't know. I am not sure she came while I was there; but he was green while I was there. By green, they told me she had come from the old country; she told me she had come from the old country. All I know, Miles Kelley gave me orders to quit the premises; that his wife was in bad health, and his sister was going to New York, and he was not going to keep no more boarders.

114 *Mr. Miller's objection.*

Mr. Miller here coming in objects to the further taking further testimony, as the case had been closed.

It is so long ago now I can't say, but to the best of my recollection she came while I was there; she disappeared. Mr. Kelley kept a tavern. I was working at the Capitol, and I was at Miles Kelley's four or five times a day. I took my grog there, and I did not see her for some time after that Kelley said his sister was going to New York. I was not then boarding at Miles Kelley's; I had left there and was boarding elsewhere.

Cross-examination.

I boarded there eight or nine years ago; whether Miss Kelley, now Mrs. Owen, came there while I was there, or was there I went, I can't say positively. To the best of my belief it was in the fall I went there. I recollect when Mr. Buchanan was inaugurated; how long before or after the inauguration I went there I can't say. I could not say whether I was ordered to leave before or after the inauguration; to the best of my belief, it was before the inauguration that I was told to leave.

Re.

To the best of my belief, I had left there before the inauguration; I have no means to fix the time.

PATRICK ALLEN.

115 WEDNESDAY *April* 5th, 1865.

Margaret Ward, heretofore sworn, is again produced on the part of the defendant.

(Mr. Miller, complainants' counsel, objects to the recall of the witness.)

The witness then says: I knew Miss Ellen Duffy before she ever married Miles Kelley or before Miles Kelley was ever introduced to her. She gave me this money, placed it all in my hands, amounting to seven hundred dollars, every penny of it gold. She made the money; it was her earnings. When Mr. Kelley and she, after their marriage, wanted to buy a house. The money remained in my hands for some time after the marriage. I don't know how long it was; it may have been more than six months. They wanted to earn more money; but not one penny which he earned, or they earned together, ever came into my fingers. Mr. and Mrs. Kelley came to my house to get the money to buy the house and lot in G street; to get the money which was in my hands. They stated to me, when they came to my house, Mrs. Kelley asked for the money; Mr. Kelley did not ask, he seemed diffident about it, as he knew he did not earn the money. Mrs. Kelley said they were going to buy a house on G street. I went up stairs and brought down the box that the money was
116 in. I laid it on the table in our dining-room. I can't say whether she opened the box or he opened it; can't say whether [I can't say whether] Mr. Kelley or Mrs. Kelley had the key of the box. They counted out four hundred dollars in gold and locked the box again and gave the box to me and I carried it up stairs again. The balance of the money was returned in the box to me; the balance was the difference between the $700 and the four hundred dollars, which they took away. I never heard Mr. Kelley say what he did with the money. I think Mr. & Mrs. Kelley came together at different times and got the rest of the money; the three hundred dollars which was left.

Cross-examination.

I can't recollect well how long Mr. and Mrs. Kelley were acquainted before they were married. I don't know whether it was from August until the next January or until a year after. Mrs. Kelley was in the meantime nursing or waiting on the child of Major Mordecai. Sometimes gave me fifty dollars at a time; I did not always count the money; I did count the money, but not as she brought it to me. My sister, Mrs. Kelley and myself counted the
117 money one time. Mrs. Kelley (then Mrs. Duffy) once loaned money to a gentleman in New York before she came to Washington. I had not the key to the box. I do not think the box was locked until Mr. Kelley and Mrs. Kelley were married. I would not hold it any longer. The box was in my own charge and custody, in no one else in the house; no one had access to this money box except myself; the box never went out of my hands until it was delivered to Mr. and Mrs. Kelley. Mr. and Mrs. Kelley unlocked the box. The box was locked when I brought it down from my room; when the box was brought down Mr. and Mrs. Kelley were standing there; I handed the box to them; I did not watch who opened the box; I do not know which of them had the key to that box. There was three hundred dollars in the box after they had taken the four hundred dollars out; I did not count it. I did not go with them when they were about to purchase the house and lot; I know they purchased the house and lot on G street. It was somewhere on G street; it was somewhere on G street near the the printing office. I was not there; I never saw Mr. and Mrs. Kelley there. I know nothing about whether that house and lot was bought before or after Kelley's naturalization; I know nothing
118 about his naturalization. I saw them count this money; they counted out four hundred dollars. I do not know how long after their marriage. Mrs. Kelley had no child then. It was about a year after; I can't state the time. I do not know who was present at the various times when they got the money; Kelley and his wife were always together when they got the money of me.

Examination-in-chief resumed.

I had counted the money before; I did not count the balance after they took out the four hundred dollars.

Cross-examination.

I know they bought the house and lot because they come to me to me to get the money of me to pay for it; I know they bought the house and lot; I know Mr. and Mrs. Kelley would not tell me a story. I don't know, except that they said they were going to buy a house and lot.

MARGARET WARD.

Ellen Kelley recalled.

Ellen Kelley, the defendent, was again produced by her counsel. (Mr. Miller objects.)

Before my marriage I earned this money. A part of my money I placed in the hands of Miss Margaret Ward. I had seven
119 hundred dollars in her hands at the time of my marriage; it remained there until we bought the house and lot on G street of Mr. Hall; I think his name is Theodore Hall; I am not certain that his name is Theodore; my husband got a deed from him; it was before my husband was naturalized. I think my husband paid Mr. Hall three hundred and seventy-five dollars besides the other expenses of getting the deed; the expenses of getting the deed was over and above the three hundred and seventy-five dollars paid to Mr. Hall; my husband got this money from me at Miss Margaret Ward's house; he got from me the four hundred dollars at Miss Ward's, and he told me the property should be secured to me. My husband got the remaining three hundred dollars; we took the box away and my husband made use of the money in his own business, for his own uses; my husband said he would secure it to me, and the interest on it as it was my earnings. This was after the marriage. A portion of this three hundred dollars my husband took to bring his sister, Mrs. Owens, on Philadelphia when she came from Ireland. Mr. Kelley owed some small debts, which I, as his administrator, paid. It was more than fifty dollars; was a hundred dollars. He left sufficient personal property to pay all his debts.

120 *Cross-examined.*

I can't tell exactly how long after my marriage that my husband sent or went to Philadelphia to bring his sister, Mrs. Owens, on. I can't tell how long I had been married before Mr. Kelley got the money from me to buy the lot on G street; it was soon afterwards, I have not a reccord in my mind of the time. Mr. Kelley and I were married on the second day of January, 1853; I can't tell how long after that he went to Philadelphia after Mrs. Owens. Mr. Kelley did not go to Philadelphia expressly after his sister, but he went on also to arrest a woman who had robbed us, and he brought his sister on. I was not asked in my examination-in-chief whether Mr. Kelley had any other business when he went on to Philadelphia. I swore in the Orphans Court according to the valuation which was given to me of the things in the house; I was not sworn before the valuation was made.

Examination of Mary Ann Malone.

Mary Ann Malone, produced by complainant, being sworn by the auditor, says:

My name is Mary Ann Malone, was Mary Ann O'Brien before the marriage. I have been acquainted with Miss Kelley, now Mrs. Owens,

ever since she came to this country. She came here to this
121 country before the inauguration of Mr. Buchanan; I do not know how long before the inauguration. I do not remember the month she came or how many months before the inauguration. I was always very well acquainted with her and on good terms with her, intimate. I saw her very often. The Sunday after she came to this country my husband, brother-in-law, and myself went up to her brother's to see her. Mrs. Owens and I often visited each other. I never heard anything of the kind that Mrs. Owen, then Mrs Kelley, gave birth to a child. I never saw Mrs. Owens, then Miss Kelley, in a pregnant state; and as often as I saw her I never saw or heard anything of the kind. I never noticed anything of the kind.

Cross-examination.

I do not know how if fix that she was here before the inauguration of Mr. Buchanan. I heard she was at the inauguration of Mr. Buchanan, and that is the only way I fix it. I have no knowledge from Mr. Kelley or Mrs. Owen of her going to New York at any time; I never heard of it. I have no knowledge of her being absent from Mrs. Kelley's house for any weeks or months; I never missed her from the house. I never went to the house and found her
122 locked up at any time; I never heard of her being locked up. I do not know where she went to hire after she left Miles Kelley's house. I do not know how long after she left Kelly's house before she married Mr. Owens. I do not exactly know. I disremember the season of the year when Mrs. Owen came here.

Re-examined.

Every time I went to Miles Kelley's while Mrs. Owen lived there I always found Mrs. Owen there.

James Malone.

James Malone produced by complainants.

I have been acquainted with Mrs. Owen ever since the Sunday after she came to Washington, and I was acquainted with her in the old country when she was a little bit of a girl. I frequently saw her from the first time I saw her after she got here; I was sometimes, not verry often, in her company. I never heard of Miss Kelley, now Mrs. Owen, giving birth to a child previous to her marriage; she was not in a state of pregnancy to my knowledge. I did not go to the In.

Cross-examination.

I guess I am about fifty-six or seven years of age; I can't say how much older I am than Mrs. Owen; I was at least seven or
123 eight years older than Mrs. Owen; I do not know how much older. I have been in this country for twelve years. I left the

old country twelve years ago. She was apparently full grown when I left the old country; I can say positively that she was full grown. I was a boy when I first knew Mrs. Owen; she lived about half a mile from me. I can't tell how old she was when I first knew her. I have no knowledge of Mrs. Owen's going to New York; I never heard of it from Miles Kelley or Mrs. Owen; I never heard of her going to New York. I don't know where she went after leaving Miles Kelley's. I know of places where she lived, viz., on Capitol Hill and other places. I never knew of her being locked up in Miles Kelley's. I went there before she came, and afterwards. I went there every week and every two weeks, and I never knew or heard of her being locked up.

Re-exm'd.

I saw her frequently at Miles Kelley's while she was there; saw her every time I went there; was on intimate terms with her; never heard that she was locked up.

Mary Ann Malone recalled.

By Mr. Brent:

I have been in the country sixteen years. I do not know
124 how old I am, or how old I was when I came; my mother may have told me; I have forgotten. I knew Mrs. Owens in the old country. She and me often went together when we were children; I think I am a little ahead of her; I don't know which of us was the oldest; we were about the same size; I was a little taller.

Re-exam'd.

I think girls of eighteen or nineteen years appear to be full grown.

The depositions contained from page 1 to 23 were taken by me.

10 April, 1865.

W. RDDIN, *Auditor.*

Certificate of naturalization of Miles Kelley.—Filed Feb'y 17th, 1865.

DISTRICT OF COLUMBIA, *to wit*:

At a Circuit Court of the United States for the District of Columbia, held for the county of Washington, at the city of Washington, on the fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth, present, the Honorable William Cranch, chief judge, James S. Morsell, and James Dunlop, associate judges, Jonah D. Hoover, esquire, marshal, John A. Smith, clerk.

125 In the record of proceedings of the same court, among others, are the following, to wit;

Be it remembered, that heretofore, to wit, on the 20th day of

April, in the year of our Lord one thousand eight hundred and fifty-three, at the county of Washington aforesaid, appeared Miles Kelley, a native of Ireland, aged about twenty-four years, bearing allegiance to the Queen of Great Britain and Ireland, having emigrated from New Ross, and arrived at Baltimore on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, and intends to settle at Washington, D. C., and in open court report himself for naturalization, and declared, on oath, that it is bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly to the Queen of Great Britain and Ireland, according to the laws of Congress in such case made and provided.

And now, to wit, on this eighth day of May, in the year of our Lord one thousand eight hundred and fifty-five, appears again, in open court here, the said Miles Kelley, and exhibits to the court here a certificate of his report and declaration aforesaid, and it appearing
126 to the satisfaction of the court by the oath of Edward Herbert, a citizen of the United States, that the said Miles Kelley has resided within the limits and under the jurisdiction of the United States for five years last past, without having been out of the territory of the United States; during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. And the said Miles Kelley, in open court, here makes oath that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to the Queen of Great Britain and Ireland, to whom he was before a subject. It is therefore ordered by the court here that the said Miles Kelley be admitted a citizen of the United States, and he is accordingly admitted a citizen of the Uniten States agreeably to the laws of Congress in such case made and provided.

In testimony that the foregoing is truly taken from the record of proceedings of the said court, I have hereunto subscribed my name and affixed the seal of the Supreme Court of the District of Columbia this 17th day of February, 1865.

[SEAL.] R. J. MEIGS, *Clerk.*

[5 c. rev. stamp cancelled.]

127 In the Supreme Court of the District of Columbia, the 30th day of May, 1865.

Decree confirming auditor's 2d report, and for distribution.

OWEN *et al.*, complainant,
v.
KELLEY *et al.*, defendant. } No. 70. Equity.

Thirty days having elapsed since the second report of the auditor William Redin, in this case was filed, and no exceptions to the said

report having been made, the said report is this 30th day of May, A. D. 1865, on the motion of William J. Miller, solicitor for complainants, ratified and confirmed, and the amount of money in the hands of John F. Ennis and William J. Miller, as trustees in this cause be, and the same is hereby, ordered to be distributed according to the auditor's report.

By order of the court.

Supreme Court of the District of Columbia.

128 *Petition of Ellen Kelley to strike out decree of ratification.—Filed June* 28, 1865.

OWENS *et al.*
v.
ELLEN KELLEY. } No. . Equity.

128 The petition of Ellen Kelley respectfully sheweth, that on the 14 April, 1865, the auditor filed his report in the above cause; and on the 30th May, 1865, this court, sitting in special term, ratified and confirmed said report and ordered distribution. Your petitioner is advised and charges that such ratification was premature under the 83 rule of this court, and the same ought to be set aside as improvidently made. Your petitioner is ready to file exceptions, which she believes to be valid exceptions, so soon as said ratification is set aside. Your petitioner further sheweth, that the case was a disputed one, as was well known to W. J. Miller, the solicitor, on whose motion said report was ratified, and who failed to give any notice to the solicitor of your petitioner of his intention to have said report confirmed. Wherefore your petitioner prays that said order of the 30th May last may be set aside as improvidently granted, and that your petitioner may be allowed forthwith to file her exceptions, which she is advised she could have done any time before the first Tuesday in June, but for said irregular order of 30th May,
129 1865, and as in duty will ever pray.

ROBERT J. BRENT,
For Petitioner.

Order rescinding decree of May 30, 1865.—*Filed July* 5, 1865.

ELLEN KELLEY
ats.
OWENS *et al.* } No. . Equity.

Ordered this 5 July, 1865, that the order heretofore passed on the 30 May last in this cause be, and the same is hereby, rescinded and set aside, and that said Ellen Kelley be allowed to file her exceptions to the report of the auditor within ten days from this date.

By order of the court.

Exceptions of Ellen Kelley to auditor's report.—Filed July 5, 1865.

OWEN *et al.*
v.
ELLEN KELLEY. } No. 70. In Equity.

Exceptions of Ellen Kelley to the auditor's account, and report.

This exceptant begs leave to except to said report and account, for the following reasons, viz:

1. Because the said auditor does not allow the claim of this exceptant, as widow and sole heir-at-law of Miles Kelley, to the
130 nett proceeds of real estate bought by said Miles Kelley after his naturalization, and which the auditor states to amount to $1,378 98.

3. Because the auditor has only allowed the sum of $60 86 to this exceptant, as used for her dower right therein.

2. Because the said auditor has distributed the sum of $1,378 98 to Mrs. Owens, as in his said report appears.

4. Because the auditor has failed to allow to the exceptant the net proceeds of lot 25, in square 625, which was purchased by said Miles Kelley, with the separate money of this exceptant, as showen in the evidence.

5. Because the auditor has not allowed to this exceptant the seven hundred dollars, which was the separate money of the exceptant, and which was received by said Miles Kelley.

R. J. BRENT, *For exceptant.*

Margaret Ward's Affidavit.—Filed Oct. 25, 1825.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

131 Before the subscriber, a justice of the peace in and for Washington county, personally appears Margaret Ward, this 22nd October, 1865, and made oath on the holy Evangels of Almighty God that she is the same person of that name who was examined before Mr. Redin, the auditor, in the case of Kahoe *et al.* against Kelley; that she is much surprised to hear her testimony is recorded by the auditor as stating that she first met Mrs. Kelley in 1832, the year of the cholera in New York, and she was then fully grown. Deponent positively states that she never made that statement. She never was in New York in her life, and never saw Mrs. Kelley untill she came to Washington, in or about 1848 or 1849, and she was then fully grown, and said she had previously been living in New York. Deponent did state that when she first saw Mrs. Kelley, it was the year of the cholara in New York, but she ment the second cholara, as it was called in New York, and not the first cholara, which was about 1832; and in this way she supposes the auditor made the mistake in recording her testimony, and getting the year 1832; but be that as it may, this deponant solemnly declares that she never saw Mr. Kelley
132 untill 1848 or 1849, in Washington; and she knows it was while Gen. Taylor was President that she first saw Mrs. Kelley, at which time Mrs. Kelley was over twenty-one years of eag apparently.

Ellen Kelley's affidavit.—Filed Oct. 25, 1865.

And at the same time, before me, personally appears Ellen Kelley, and made oath that she resided several years in New York; that is, from the time of arriving in the United States in 1837, until she came to Washington, just after the inauguration of Gen. Taylor, when she first became acquainted with Margaret Ward. Deponent will recollect that she was induced to leave New York because there was considerable panic about the cholera being in New York, but in 1832 deponent was in Ireland, and a small child. Deponent came to the United States in the ship Rosebank, of Belfast, Ireland, Captain Hugh Marlgoiner.

ELLEN KELLEY.
MARGARET WARD.

Sworn and subscribed to before me, this 23d day of Oct. A. D. 1865.

J. W. BARNACLO, *J. P.*

[2 5-ct. rev. stamps cancelled.]

Petition of Ellen Kelley.—Filed Oct. 25, 1865.

To the hon. the judges of the Supreme Court, sitting in equity.

133 The petition of Ellen Kelley respectfully sheweth, that there is a mistake in the auditor's statement of the deposition of Margaret Ward, as appears by the annexed affidavits. Wherefore she prays that the case may be referred back to the auditor, for the purpose of taking the evidence of Margaret Ward in correction of said mistake.

ROBERT J. BRENT,
For Petitioner.

Compl't's sol'r's endorsement on petition: I have no right to object to any petition or paper to be filed by the defendant, but desire to be heard before refference be made on the above petition, and ask to be notified of the day of argument of reference on the petition and affidavit.

WM. JNO. MILLER,
Sol. Complainants.

Judge's endorsement on petition: Clerk will file this petition; to be heard Friday morning, 27 Oct., '65.

A. B. OLIN, *Justice.*

Order of reference to auditor.—Ap'l 16, '66.

KAHOE *et al.* *vs.* KELLEY. } No. . Equity.

134 Ordered, this 16th April, 1866, that the above cause be referred back to the auditor, to take evidence upon the date of

the arrival of Mrs. Ellen Kelley in the United States, and also of her arrival in the city of Washington, and upon her age at the time of her arrival in the United States, and her continued residence thereafter.

A. B. OLIN, *Justice, &c.*

Auditor's 3rd report.—Filed Ap'l 24, 1866.

OWENS AND OTHERS *ag't* KELLEY AND OTHERS } No. 70. Equity.

By the order of the 16th of April, instant, the above case is sent back to me to take evidence upon the date of the arrival of Mrs. Ellen Kelley in the United States, and also of her arrival in the city of Washington, and upon her age at the time of her arrival in the United States, and her continued residence thereafter.

The return of the cause to me is in consequence of the alledged mistake in Miss Ward's testimony. Mr. Brent and Mr. Miller, the counsel for the respective parties, have agreed before me that, instead of bringing Miss Ward back, the witness who deposed upon
135 the above points, I may take her affidavit, which has been filed, as her new deposition, accompanied with my statement and Mr. Woodward's, who wrote down her testimony on her first examination, and upon that affidavit. I report now that Miss Ward has corrected or changed her statement as made on page 3 of the depositions, and that she now states that she never was in New York in her life, and never saw Mrs. Kelley until she came to Washington, in or about 1848 or 1849, and she was then fully and well grown, and said she had lived in New York. And I further report upon Mrs. Kelley's own testimony, that she arrived in the United States, at New York, in 1837, and was then in her 15th year, and has continued to reside in the United States ever since, (page 1 of the deposition) These facts, of the time of her arrival, her being a minor at that time, and her continued residence, are stated in the former report, at page 3.

The auditor deems it due to accuracy to state that there was no mistake or misapprehension on his part or of Mr. Woodward, the examiner, who took down Miss Ward's testimony. That if there was any mistake, as he now thinks there was, in her fixing Mrs. Kelley's arrival in New York during the cholera of 1832, it was the
136 mistake of Miss Ward herself and of the counsel of Mrs. Kelley. Miss Ward certainly stated on her former examination that she "had known Mrs. Kelley a great many years, when the cholera raged in New York. I think it was in 1832, and she came on here." This was written down in the presence of the counsel on both sides, who were both keenly watching the progress of the testimony, and her whole deposition was carefully read over to her in the presence and hearing of both.

I did not rely on Miss Ward's statement as to the time of Mrs. Kelley's arrival in the United States and her age at that time, be-

cause Mrs. Kelley had herself stated both, and I deemed her better authority on both points. My ruling against her as to the after-acquired lands was not because it was necessary for her to make the two years declaration of intention to become a citizen before being naturalized, but that she had never, in fact, been naturalized, and did not become a citizen by her marriage with Miles Kelley, because he was not a citizen at the time of her marriage with him, nor at the time of the passage of the act of Congress of 1865, and that his subseqnent naturalization would not help her and make her a citizen.

137 Respectfully,

W. REDIN, *Auditor.*

23 April, 1866.

Wm. R. Woodward.—Statement.—Filed Ap'l 24, 1866.

At the request of Mr. Redin, auditor, I wrote down the deposition of Margaret Ward and other witnesses in the case of Owen and Kelley. I wrote Miss Ward's deposition just as she delivered it, read over each answer to her as I wrote it, and then aftewards read the whole deposition to her. All this was done in the presence of Mr. Redin and the counsel on each side. I am confident of the accuracy of my report of what she said.

23 April, 1866.

WM. R. WOODWARD.

Decree.—Filed July 5, 1866.

EDWARD OWENS & OTHERS
v.
ELLEN KELLEY, widow. } No. 70. Equity.

This cause coming on to be heard on the exceptions to the auditor's report, was fully argued by counsel and considered by the court. It is therefore, this 5th day of July, 1866, adjudged, ordered, and decreed that the widow of Miles Kelley is entitled to her dower in the proceeds of lot 25, in square 625, and the residue of said proceeds belongs to Ellen Owen, Margaret Kahoe, and Phillip Kelley,

138 heirs of Miles Kelley, and the distrobution of said proceeds, as made by the auditor, is hereby ratified; and it is further ordered that the proceeds of the real estate of Miles Kelley, other than said lot 25, in square 625, amounting to thirteen hundred and seventy-eight 98-100 dollars, be distributed and paid by the trustees to Mrs. Ellen Kelley, the widow of said Miles Kelley, or her solicitor. From which order and decree the complainants pray an appeal, which is hereby allowed without filing bond.

A. B. OLIN.

In the Supreme Court of the District of Columbia, holding a Court of Equity, this 5th day of July, A. D. 1866.

Compl't's prayer for appeal.—Filed July 5, 1866.

OWEN *et al.*, complainants,
vs.
KELLEY *et al.*
} No. 70. Equity.

The complainants in the above-entitled cause come and pray an appeal from the order and the decree of the said court in the said cause, made July 5th, 1866.

WM. JNO. MILLER,
Sol. for Comp'ts.

139 *Order Trustees pay sol'r of Ellen Kelly*, $60 86.

OWEN *et al*
v.
KELLEY.
} No. 70. In equity.

Ordered this 22 Dec., 1866, that the trustees in this cause pay to the solicitor of Ellen Kelley sixty dollars and eighty-six cents, audited to her.

A. B. OLIN, *Justice.*

Proceedings before the Supreme Court of the District of Columbia, in general term, commmencing the first Monday, 6th day of May, in the year of our Lord one thousand eight hundred and sixty-seven.

MONDAY *May* 6, 1867.

The court commences the term by proclamation by the marshal. Present, Justices Olin, Fisher, and Wylie.

EDWARD OWEN AND OTHERS, compl'ts,
v.
ELLEN KELLEY and another.
} No. 70. Equity. Docket 7.

On motion of Mr. Miller, it is ordered that this case be placed on the calender of this court for the present term.

140 In the Supreme Court of the District of Columbia, this 10th day of June, A. D. 1867.

Decree of court in general term, June 10th, 1867.

OWEN *et al*
v.
KELLEY *et al.*
} No. 70. Equity.

This cause came on to be heard on appeal from a decree made by one of the justices of this court, at special term, and the same having

been argued by the counsel of the respective parties, and duly considered by the court, it is, this eighth day of June, A. D. 1867, ordered, adjudged, and decreed that so much of the order and decree passed in this cause on the 5th day of July, A. D. 1866, which ordered the proceeds of the sale of the real estate of Miles Kelley, deceased, other than lot 25, in square 625, amounting to thirteen hundred and seventy-eight 98-100 dollars, be distributed and paid by the trustees to Mrs. Ellen Kelley or her solicitor be, and the same is hereby, reversed. And it is further ordered, adjudged, and decreed, that the proceeds of the said sale of the real estate in this cause be distributed and paid by the said trustees to the said Ellen Kelley, Ellen
141 Owen, Margaret Kahoe, and Philip Kelley, or their respective attorneys, according to the first report of the auditor of this court in this cause; and it is further ordered, adjudged, and decreed, that the said Ellen Kelley pay the costs in this cause. From which decree the said Ellen Kelley prays an appeal in open court to the Supreme Court of the United States, and the same is allowed accordingly.

By order of the court.

In the Supreme Court of the District of Columbia, this 31st day of July, A. D. 1867.

Order for trustee to pay compl'ts $365 61-100.—*Filed July* 31, 1867.

OWEN *et al.* / *v.* / KELLEY *et al.* } No. 70. Equity.

Upon motion of complainants, by William J. Miller, their solicitor, it is, this 30st day of July, A. D. 1867, ordered that the trustees in this cause pay to the complainants, or their solicitor, the sum of $365 61-100, being the amount allowed by the auditor in this cause out of the proceeds of the sale of the real estate mentioned in
142 this cause, purchased by said Miles Kelley, deceased, previous to the naturalization of said Miles Kelley.

By order of the court.

Facts agreed on by counsel.

On the agreement of the case, the following facts are admitted:

1st. That the said Mrs. Owen, Mrs. Kelley, and Mrs. Kahoe never declared their intention of becoming citizens of the United States in a court, or before a clerk of any court, in accordance to the acts of Congress.

2d. That said Mrs. Owen, Mrs. Kahoe, and Mrs. Kelly have continued to reside in the United States from the day of their arrival therein.

3d. That the said Mrs. Owen, Kelley, and Kahoe are free white persons, of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

4th. That Miles Kelley died on the 2d day of March, 1862, intestate, leaving no child or children, or any issue of such child or children, but left surviving him in the United States his widow, the said Ellen Kelley, and his two sisters, the said Mrs. Owen and Mrs. Kahoe, and Philip Kelley, a brother, in Ireland. Said Philip has never been in the United States and is an alien.

WM. J. MILLER,
Solicitor for Complainants.
BRENT & PHILIPS,
Solicitor for Defendant Kelly.

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been argued by the counsel of the respective parties, and duly considered by the court, it is, this eighth day of June, A. D. 1867, ordered, adjudged, and decreed that so much of the order and decree passed in this cause on the 5th day of July, A. D. 1866, which ordered the proceeds of the sale of the real estate of Miles Kelley, deceased, other than lot 25, in square 625, amounting to thirteen hundred and seventy-eight 98-100 dollars, be distributed and paid by the trustees to Mrs. Ellen Kelley or her solicitor be, and the same is hereby, reversed. And it is further ordered, adjudged, and decreed, that the proceeds of the said sale of the real estate in this cause be distributed and paid by the said trustees to the said Ellen Kelley, Ellen
141 Owen, Margaret Kahoe, and Philip Kelley, or their respective attorneys, according to the first report of the auditor of this court in this cause; and it is further ordered, adjudged, and decreed, that the said Ellen Kelley pay the costs in this cause. From which decree the said Ellen Kelley prays an appeal in open court to the Supreme Court of the United States, and the same is allowed accordingly.

By order of the court.

In the Supreme Court of the District of Columbia, this 31st day of July, A. D. 1867.

Order for trustee to pay compl'ts $365 61-100.—*Filed July* 31, 1867.

OWEN *et al.* }
v. } No. 70. Equity.
KELLEY *et al.* }

Upon motion of complainants, by William J. Miller, their solicitor, it is, this 30st day of July, A. D. 1867, ordered that the trustees in this cause pay to the complainants, or their solicitor, the sum of $365 61-100, being the amount allowed by the auditor in this cause out of the proceeds of the sale of the real estate mentioned in
142 this cause, purchased by said Miles Kelley, deceased, previous to the naturalization of said Miles Kelley.

By order of the court.

Facts agreed on by counsel.

On the agreement of the case, the following facts are admitted:

1st. That the said Mrs. Owen, Mrs. Kelley, and Mrs. Kahoe never declared their intention of becoming citizens of the United States in a court, or before a clerk of any court, in accordance to the acts of Congress.

2d. That said Mrs. Owen, Mrs. Kahoe, and Mrs. Kelly have continued to reside in the United States from the day of their arrival therein.

3d. That the said Mrs. Owen, Kelley, and Kahoe are free white persons, of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

4th. That Miles Kelley died on the 2d day of March, 1862, intestate, leaving no child or children, or any issue of such child or children, but left surviving him in the United States his widow, the said Ellen Kelley, and his two sisters, the said Mrs. Owen and Mrs. Kahoe, and Philip Kelley, a brother, in Ireland. Said Philip has never been in the United States and is an alien.

WM. J. MILLER,
Solicitor for Complainants.
BRENT & PHILIPS,
Solicitor for Defendant Kelly.

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SUPREME COURT OF THE U. S.

APPELLANT'S BRIEF.

KELLY, Appellant,
vs.
OWEN, et al.

This appeal grows out of a bill filed by the appellees, in the Supreme Court of the District of Columbia holding a Court of Equity, for the partition or sale of the real estate of the late Miles Kelly. The complainants being the brother and sisters of the deceased, and their husband; and the defendant, his widow. Miles Kelly died a naturalized citizen, and had acquired real estate in the District of Columbia both before, and atter, his naturalization.

The contest in this case arises solely over property acquired *after* naturalization, and which cannot pass to his *alien* representatives.

Spratt vs. Spratt, 1 Peters, 348. Spratt vs. Spratt. 4 Peters, 394.

It, therefore, becomes important to decide and is the only question in the case, which of the parties were citizens of the United States at the time of the descent cast.

All the parties, both complainants and defendant, were aliens by birth. It will not be disputed that both Mrs. Owen, and Mrs. Kahoe, complainants, came to this country several years after they arrived at eighteen years of age. The auditor of the court below finding on the testimony that Mrs. Kahoe was twenty years and four months, (marginal page 82 record,) at the time of her arrival in this country; and Mrs. Owen above twenty-one years, (marginal page 84.) The other complainant, Philip Kelly, is ad-

mitted never to have come to this country and is out of the question. The widow, Ellen Kelly, arrived when she was fourteen or fifteen years of age, and has never been out of it since. She married the decedent, January 2d, 1853, (marginal page 81,) who was naturalized 8th May, 1855, dying without children or issue, on 2d March, 1862, intestate.

Mrs. Owen married Edward Owen, 24th December, 1861, who was himself a foreigner, having been naturalized 2d June, 1836.

Mrs Kahoe married the 5th September, 1852. Her husband was also a foreigner, but was naturalized after marriage on the 9th October, 1854.

The question arises on these facts, which, if any of these three ladies, were citizens of the United States by virtue of their marriage.

This depends upon the construction of the act of Congress of February 10, 1855, and in its connection with the previous acts of 14th April, 1802, and 26th May, 1824.

The second section of the act of 1855 enacts that "any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."

First. We shall contend that this act naturalized Mrs. Kelly, the appellant.

It is true, that at the time of her marriage with the decedent, he was not then naturalized, but became a naturalized citizen two years after. The court below, however, held, that because the decedent was not a citizen at the moment of the celebration of their marriage, she was not a woman who had married a citizen, and could not be one, who should thereafter marry a citizen, (that is, after the passage of the act of Congress,) because she was at its date already married; in other words, that the act did not apply to any woman who was married to an alien, resident in the United States with the purpose of becoming a citizen, notwithstanding he should thereafter become such citizen.

It is submitted, that this was a remedial statute, intended to confer citizenship upon every woman who was entitled under the existing laws to naturalization, and who was then or should thereafter be in a state of marriage with a citizen, entirely irrespective of the time of the celebration of the rite; otherwise, a woman who marries a person to-day although he may have declared his intention to become a citizen more than two years ago and resided here five years, and is naturalized to-morrow, does not come within the statute and is still an alien, because the husband was not a citizen of the United States at the time of the marriage.

This construction would be excluding by far the larger class of females, it was intended to affect, from its remedial provisions, and defeats principally the evils it was proposed to remedy.

It is unnecessary to cite authority or even to elaborate the proposition that such statutes are to receive the construction which most effectually accomplishes the purposes for which they were enacted; and especially so where the Court must perceive, that by such liberal interpretation those classes were comprehended, whom it was most probably the intention of the legislature to include, and where no evil consequences can follow from such construction.

We, therefore, submit that this act, by using the words "married" or "who shall be married," does not refer to the time of the celebration of the ceremony of marriage, but means a *state of marriage:* that is, that any woman who under the existing law might be lawfully naturalized and who was then in a state of marriage, or who should be in a state of marriage to a citizen of the U. S., should be taken and deemed herself a citizen.

This construction would include all those classes of women who were themselves in a condition to be naturalized, and who should thereafter become the wives of persons who subsequently became citizens.

The appellant, at the time of her marriage, was at that moment in a condition to be naturalized, she subsequently came into a state of marriage with a citizen—her husband, after the marriage, becoming a citizen.

This view was taken in the only case we have found where this act of 10th February, 1855, has been interpreted, although its entire decision on this act was unnecessary for the purposes of the case before the Court.

Burton *vs.* Burton.

1 Keyes, (Court of Appl's of N. Y.)

Besides, if the construction of the Court below is adopted, that the statute refers to the time of marriage and that the parties must at that moment fulfil all the requirements of the statute, then no woman who is an alien and who may have resided in this country for four years and eleven months, but not the complete five years, and who may at that period have married a native born citizen, can ever become a citizen of the U. S. by force of its provisions, but must resort to the general naturalization laws. On the contrary, if the act refers to a state of marriage, then the woman, in this case, would after the five years had expired, and the fulfillment of the other requisites of the naturlization laws, become a citizen. This is the only rational construction of the act, and does not require an alien woman desirous of availing herself of this act, to postpone her marriage to a citizen until after she might be lawfully naturalized, but allows her to marry, and at any time thereafter, during the marriage to fulfill the requirements of the naturalizations laws as to residency, oath or affirmation of intention to become a citizen, on the surrender of dignities, offices, titles, &c.

The grammatical construction of the words of the statute also favors this view. The words "married" and "who shall be married" are both passive in their signification, and indicate a state of existence, and not the performance of an act.

If the active voice of the verb "marry" had been used,

and the words of the act had been "any woman, &c., who has married, or who shall marry," there would be more ground for the decision of the Court below.

If ours be the true construction of the statute, then the appellant who came to this country when only 14 years of age and fulfills all the requirements of the naturalization laws must recover her right of dower at least, in the property from which she has been excluded by the decision of the Court. But we go farther and respectfully contend that she is entitled to the entire proceeds of the property, being the only one of the parties to this Bill who is a citizen of the U. S.

Second. This brings us to the consideration of the status of citizenship of Mrs. Kahoe and Mrs. Owen.

These ladies unlike the appellant Mrs Kelly, came to this country after they had arrived at 18 years of age, and under the general naturalization laws, it was necessary for them *to declare on oath or affirmation* before a court of competent jurisdiction, that it was their *bona fide* intention to become citizens of the U. S., and make a renunciation forever of all allegiance to every other Government and particularly to the Government of which the applicant was then a subject, more than two years before they could be naturalized.

Act 14, April, 1802, Sec. I.

This, it is conceded in the record, neither of them ever did.

The question therefore is, whether under the act of Feb'y 10, 1855, which declares that any woman "who *might be lawfully naturalized under* existing laws" marrying a citizen, is made a citizen without having conformed to those requirements of declaration on oath or affirmation of intention to become a citizen, and which with five years residence and renunciation of titles if possessed, are necessary before a person can be naturalized

In order to determine who might be lawfully naturalized, we turn to the act of 1802, which declares that persons

Marriage, in our view of the construction of this law, obviates only the necessity, when all the other conditions are fulfilled, of applying to the court for the decree of naturalization and the taking of the oath of allegiance.

If we are right, then Mrs. Kahoe and Mrs. Owen were not citizens at the time of the descent cast and Mrs. Kelly, the widow is under the act of descent entitled as sole heir.

Laws of Maryland, 1786, ch. 45. 1 Peters, 34, 3

These views also support the superior equity of the widow whose earnings both before, and after, her marriage enabled her husband to accumulate his property.

From marginal pages 115 to 121 of the record, it will be seen, that the Appellant had saved $700 in gold prior to her marriage, with which her husband purchased a house and promised to secure it to her. It is fair to presume from the testimony, that either the consideration of the disclosure by appellant of where this money was, and of the surrender of it without suit, by Miss Margaret Ward, who had it at that time as the banker of Mrs. Kelly, was the promise to secure the house and lot bought with it, to his wife. Or, that after he knew his wife was possessed of these funds he allowed the same to remain in the hands of Miss Ward as trustee for her benefit, and after this appropriation withdrew them without authority. Whichever view is adopted his estate is chargeable.

The consideration of the purchase proceeding from Mrs. Kelly a resulting trust arose in her favor, which need not be expressed in writing, under the statute of frauds, and which although entirely voluntary will be enforced in a court of equity in favor of a wife or child.

1 Leading cases in Eq., 224 et. seq.

Or if the other view is adopted as the true result of the testimony that he consented the funds should be held by the trustee for his wife and subsequently borrowed them, then his estate is chargeable.

R. J. BRENT,
S. L. PHILLIPS.
Of Counsel for Appellant.

In the Supreme Court of the United States.

KELLY, *Appellant*,
vs.
OWEN *et al*, *Appellees*,
No. 161.

APPELLEES' SUPPLEMENTAL BRIEF.

By consent of Messrs. Brent & Phillips, Solicitors for appellants, Solicitor for appellees submits respectfully the following on the last point in appellants brief:

As to lot 25 in square 625, (contended for by Messrs. Brent & Phillips) as purchased by Miles Kelly with money belonging to his wife, (the appellant;) that he, Kelly, promised to secure the lot to her, and that the same in equity belongs to her. I humbly submit.

1st. All the personal property of a woman at and after marriage vests in and belongs to the husband absolutely.

2d Wendall's Blackstone, 433 marg. page.
2 Kent, (9 ed., 130,) marg., page 143.
1st Thomas Coke, page 129, marg. note 1.

2d Contracts made between husband and wife are void.
2 Kent, (9 ed., 130,) marg. page 143.

3d. To constitute a gift, or that the husband must hold as trustee for the wife, there must be a gift to a trustee for the wife, or the husband must divest himsef of the property, and engage to hold it as trustee for the separate use of the wife.
Mews vs. Mews, 21 Eng. L. and E., page 556.
Fisk vs. Cushman, 6 Cushing, page 20.

4. There must be a clear and distirct evidence of a gift between husband and wife, or that the husband took the the wife's seperate estate and invested it in lands or other property for the wife's sole use and benefit.
McLean vs. Longstrand, 5 Vesey, 71.
Wallingsford vs. Allen, 10 Peters, 583.

5. There is no evidence that Miles Kelly ever promised or agreed, before marriage, to hold the lot purchased after marriage and naturalization for the sole use and benefit of appellant.

Appellant, in her answer, does not set up any claim to the lot as her seperate property.

The mere sayings of appellant is not sufficient at this stage of the case to warrant a resulting trust.

A court of equity will not say that a trust is presumed or implied, unless taking all the circumstances together that is the fair and reasonable interpretation of their acts and transactions.

2d Story Eq. Jur., 602, sec. 1195.

All agreements relating to lands, &c., must be in writing. Stat. of Frauds.

WM. JNO. MILLER,
Solicitor for Appellees.

Supreme Court of the United States.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ELLEN KELLY, *Appellant*,
vs.
ELLEN OWEN, *et al.*, *Appellees.* } No. 161.

APPELLEES' BRIEF.

Supreme Court of the United States.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ELLEN KELLY, *Appellant*,
vs.
ELLEN OWEN, *et al.*, *Appellees*. } No. 161.

APPELLEES' BRIEF.

Statement of Case.

This was a suit brought by the appellees on the equity side of the Supreme Court of the District of Columbia, October, 1863, against the appellant *et al.*, for the sale or partition of certain real estate, lying and being within the said District, of which Miles Kelly died seized and possessed. The court ordered and decreed a sale of the property. After the sale, the cause was referred to the auditor of the court, to state trustees' account and distribution. The auditor, in his report, gave the proceeds of sale to Ellen Owen, to which appellant excepted. Exceptions were heard, and the court ordered and decreed that the proceeds of sale be paid to appellant. Appellees excepted to the decree, and prayed an appeal to the general term of the Supreme Court of said District, which appeal was duly heard, and the decree of the chancellor reversed, and a decree passed ordering the proceeds of sale to be paid to the appellant and appellees, as the widow and sisters of said Kelly, deceased. The appellant excepted to said decree, and prayed an appeal to the Supreme Court of the United States.

See printed record, pages 1, 6, 15, 16, 36, 59, 62, 63.

Facts.

Miles Kelly, deceased, was naturalized 8th May, 1855.

Ib., pages 56, 57.

After naturalization, he purchased lot 20, in square 625, lot 1, square 677, also an undivided moiety of lots 3, 4, 5, 6, 7, and 8, in square 776, in the District of Columbia.

Ib., page 2.

He died 2d day of March, 1862, intestate, seized and possessed of said lots, without leaving a child or children, or any issue of such child or children.

Ib., page 65.

He left surviving him the appellant as his widow, and the appellees, Ellen Owen, Margaret Kahoe, and Philip Kelly, brothers and sisters, as his only heirs-at-law.

Ib., page 65.

The appellant arrived in the United States when she was between the ages of fourteen and fifteen; was married to said Miles Kelly 1851.

Ib., page 45.

Edward Owen was naturalized 2d June, 1835.

Ib., page 19.

Ellen Owen arrived in the United States 9th of December, 1856.

Ib., pages 46, 48, 50.

She was married to said Edward Owen 24th December, 1861.

Ib., pages 24 and 25.

James Kahoe was naturalized 16th October, 1854.

Ib., page 30.

Margaret Kahoe arrived in the United States in the year 1850.

Ib., page 32.

Margaret Kahoe and James Kahoe were married 5th day of September, 1852.

Philip Kelly was never in the United States.

Ib., page 64.

The said Ellen Kelly, Margaret Kahoe, and Ellen Owen never declared their intention of becoming citizens of the United States.

Ib., page 64.

The said Ellen Kelly, Margaret Kahoe, and Ellen Owen have resided in the United States from the day of their arrival therein; are free white persons, of good moral character; attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the same.

Ib., page 48, 64.

First Point.

The power to pass naturalization laws is vested exclusively in Congress.

Constitution of United States, art. 4, sec. viii, para. 5.

Chirac *vs.* Chirac, 2 Wheaton, page 269.

Congress, in pursuance of that power, passed the following acts:

Act 14th April, 1802, 2 Stat. at Large, p. 153.

Act 26th March, 1804, 2 Stat. at Large, p. 292.

Act 26th May, 1824, 4 Stat. at Large, p. 69.

It will be perceived, from the language of the acts, that the person applying for naturalization must be a *a free white person, a resident of the United States, and not an alien enemy.*

Act 14th April, 1802, 2 Stat. at Large, p. 153.

Priest v. Cummings, 20 Wend. R., 345.

Kent's Com., 2 vol., marg., page 72.

The rights and privileges of citizenship have been conferred on whole classes of persons.

Act 3d March, 1843, 5 Stat. at Large, 647.

10 Stat. at Large, 1159.

August 6th, 1844, 7 and 8 Victoria, ch. 66, sec. 16.

13 Law Jour., N. S. Pt. 3, p. 13.

See note at end of this brief.

1 Chitty's Blackstone, 366, side paging, note 1.

Second Point.

The certificate of naturalization being in due form is conclusive of the legal naturalization of the party.

Spratt v. Spratt, 4 Peters, 393.

Third Point.

Congress, on the 10th February, 1855, passed the following act:

"Any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen."

10 Stat. at Large, p. 604, sec. 2.

Brightly's Digest, p. 132.

The words "married, or who shall be married, to a citizen of the United States," are clear, precise, and unambiguous.

It is a well-settled rule that all enabling acts must be liberally construed. The act of 1855, being an enabling act, must be liberally construed, so as to carry out the intent of the law-maker.

Dukedom v. Essex, 8 Lond. Jur., p. 785.

Turman v. City New York, 5 Sandf., p. 16.

Tonnelle v. Hall, 4 Comstock, p. 140.

People v. Utica Ins. Co., 15 J. R., 358, 380.

The words of the act of 1855 mark out the condition of the "woman" "married, or who shall be married, to an American citizen." The law does not refer to the mere act of marriage, but refers to the existence of the married condition. That is, the man should be a citizen of the United States, the woman a free white woman, not an alien enemy, a resident of the United States, and married to the citizen of the United States. Where the law is plain and explicit, there is no room for interpretation.

Rutherforth's Institutes, Book 2, ch. 7, sec. 4.

Pollock, ch. B., Reg. v. Manning, 2 Car. and Kirw. 889.

Fourth Point.

The words "*who might be lawfully naturalized under the existing laws,*" requires no more than that the alien woman claiming its benefits be a "*free white woman, a resident of the United States, and not an alien enemy.*"

Act 14th April, 1802, 2 Stat. at Large, p. 153, sec. 1.

Same, sec. 4, condition.

Burton v. Burton, Court of Appeals, New York. Not yet reported, but see copy herewith filed, and see note at end of this brief. X

It does not make any difference whether the ceremony of marriage has preceded the naturalization or not.

Greer v. Sangston, 16 How., R., 473.

Fifth Point.

If Mrs. Owen, Kelly, and Kahoe, be citizens of the United States under and virtue of the act of 10 February, 1855, then they are entitled to take the real estate.

Act Assembly of Md. 1786, Chap. 45.

The decree of the Supreme Court of the District of Columbia in general term reversing the decision and decree of the chancellor should be affirmed with costs.

WM. JNO. MILLER,
Solicitor for Appellees.

NOTE.

The act of 7 and 8 Victoria, chap. 66, § 16, passed August 6, 1844, may be found in Law Journal, vol. 22, part 3, (being vol. 13, of New Series.) It is in these words:

"That any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject."

It introduced a new rule, and is not declaratory of the common law.

Count De Wall's case, 66 F. Moore's Privy Council cases, page 236.

X See opinion of the Supreme Court of Columbia bottom of page 13 of this brief. Burton v. Burton

In *Regina vs. Manning*, 2 Carr and Kirwan, 889, speaking of this act, Pollock ch. B., says: "The expression of the statute is '*any woman married*,' that is, already married." That these naturalization acts are to be construed literally, when they are plainly expressed, and are not to be restrained by exceptions inferred or implied by the judges, is very distinctly held in same case at page 902.

A Swiss woman, who married an Englishman, was denied her jury *de mediatate linguæ*, and the court held that a foreign woman, whose husband was a *naturalized* subject of Great Britain, might, under 7 and 8 Vic., 66, § 16, be more highly privileged than her husband, the words of the act being general that she shall "have all the rights and privileges of a *natural-born subject*.

Sir Thomas Wilde, C. J., at page 902, delivering the judgment of himself, (Pollock, C. B., Coleridge and Cassell, J. J.,) and Rolfe and Platt, Barron, in the Exchequer Chamber, thus expresses himself:

"The argument attempted to be drawn in this case from the other parts of the act of Parliament appears to be that a woman married to a husband (who was) naturalized in a particular way might, by the construction contended for on the part of the Crown, acquire a different status, and be entitled to different rights *beyond* those which her husband was entitled to. Very likely, if the husband has been *naturalized subject* to certain disqualifications applied to him by the legislative authority, he is not the less a British subject because he is undes those disqualifications; but that cannot be taken to qualify a distinct substantive enactment. *The intention of the legislature is to be collected*, not by travelling out of the act, but from looking to the whole of the act itself."

S. C., 13 London Jurist Rep., 966, 967.

The case of Burton vs. Burton (in the Court of Appeals of New York) is not like this case. In that case, Mr. and Mrs. Burton were married in England. He emigrated to the United States. His wife did not come with him or follow him to the United States: nor was she in the United States

during the lifetime of Burton. She came to the United States after his death, and claimed dower in the lands of Burton acquired by him after his naturalization. Whereas, in this case, we have Mrs. Kelly, Owen, and Kahoe, *residents in the United States* at least five years, and married to citizens of the United States at least five years before the time of the death of Miles Kelly. Yet, as the act of Congress of the 10th of February, A. D. 1855, was duly considered by the Court of Appeals of New York, in the case of Burton vs. Burton, and the opinion in that case is not to be found in any of the Reports, and the opinion ~~in that case~~ seems to make all alien women, residents of the United States, and married to citizens of the United States, citizens, I beg to add the opinion as a note to this brief.

In giving the opinion of the Court of Appeals of New York in that case, Mr. Justice Mullen said:

"The plaintiff (Mrs. Burton) rests her claim to a dower interest in the premises in question on the ground that she is, by virtue of the act of Congress above cited, (10th February, 1855,) a citizen of the United States, and it is necessary to meet and dispose of that question in the fisst instance. Is the plaintiff a citizen of the United States? To bring an alien woman within the provisions of that act, she must be—1st, capable of being naturalized, and, 2d, married to a citizen of the United States. To be capable of naturalization, under the laws of the United States in force at the time the testator acquired the lands in question, and at the time of his death, the appellant must be—1st, a free white person; 2d, he must have resided five years within the United States; 3d, he must be of good moral character, attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the same; 4th, he must renounce all titles or orders of nobility, if any he has. It is not alleged that the plaintiff does not possess all these qualifications, except one, and that is, she has not been a resident of the United States for *five years*, nor for any length of time prior to the death of her husband. At the death of her husband, when her right of dower became vested, if any right ever vested in her, she was not a resident of the United States, and could not at that time, or at any time *pri*or thereto, have been lawfully naturalized. If a residence

of five years was not a condition precedent to citizenship, residence for some length of time was most obviously contemplated. Without residence, she could not be naturalized. It is the most essential of all requirements for naturalization, and cannot be dispensed with, unless the intention to dispense with it is most clearly manifested by the legislature. It cannot require argument to show how totally essential residence is to entitle a person to become a citizen of a country to which he does not owe a natural allegiance. The legislature or other body clothed with the power of conferring the right of citizenship may dispense with it, but it requires the clearest manifestation of such an intention before it can be admitted.

"The permanency and prosperity of a country depend in a great degree upon the attachment of its citizens. To clothe aliens with the high prerogative of citizens, who have never resided within it—who know nothing of its institutions, who have never felt any of the responsibilities which a permanent resident of a country must feel—would be an act of madness or folly of which no sane man could be guilty. A law which could thus break down all the barriers which in all ages and all countries, barbarous and civilized, have thrown around the acquisition of the rights of citizenship, would, in a few years, utterly destroy the Government. Its institutions would be at the mercy of foreigners, whose capacity for mischief would only be limited by the extent of the interest which they might have at stake. No country can afford to throw open the right of citizenship to all who may desire to enjoy it, without imposing on them the duty of residing within it. The more carefully it is guarded, and the more difficult it is to obtain it, the more highly will it be prized; and while it is confined to those only who come within its jurisdiction, it will have some security against disorder and revolution. It is true, that citizenship is conferred by the acts of Congress on classes of persons who may never have been within the United States, and as to whom it is not made a condition that they shall ever become residents, but those privileges do not manifest an intention to dispense with residence in other cases, and particularly as they do not manifest such an intention in the face of a provision which makes residence indispensable. The applicant must be capable of being lawfully naturalized. He or she cannot be, while a resident and a citizen of another country."

Again, on page —, he says:

"If the plaintiff could be brought within the act of Congress referred to by being capable of being naturalized, I should be of the opinion that the marriage to Burton while he was an alien would not exclude her from the benefit of the statute. This was an enabling statute, and is to be liberally construed, so as to give effect to the intention of Congress. At the death of her husband she was, in the language of the act, married to a citizen of the United States. There would not seem to be any sufficient reason for holding that Congress intended to extend the right of citizenship to women whose husbands at the time of marriage were citizens, and to exclude those who married husbands aliens at the time of marriage, but who after became naturalized. It seems to me, therefore, that it is not necessary, in order to give to the plaintiff the benefit of the act in question, that Burton should have been a citizen at the time of her marriage to him; *but as she was not at any time during the husband's life a resident of the United States, I am of the opinion she did not become entitled to be naturalized, and consequently is not a citizen.*"

In the same case, Justice Wright said:

"It is claimed that the act of Congress passed 10th February, 1855, (10 Stat. at Large, chap. 71,) made her a citizen from and after its passage, and *I confess I am of the opinion that such is its true construction. There seems to me to be no room for a different interpretation.* That part of the act affecting the case, and which is in a distinct section, is in these words. (See Brightly's Digest, page 132, title Citizenship.) The provision is merely a transcript of the 16th section of 7 and 8 Victoria, chapter 66, 1844, which declared, 'that any woman married, or who shall be married, to a natural born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject or person naturalized.'

"Both statutes describe a condition or status of the woman existing at the moment they were passed. The words refer merely to the married condition. In Reigna vs. Manning, 2 Carr. and Kirwin, 886, in speaking of the British act, Pollock, Ch. B., said: 'the expression of the statute' is 'any woman married,' 'that is already married;' and in that case a Swiss woman who married an Englishman was denied her jury *de mediate lingua*, on the ground that this was the privilege of an alien, and the prisoner having by the act been

made a British subject, with all the incidents that attached to the status, she was not entitled to it. The act of Congress declares, that 'any woman married (that is, married at the passage of the act) to a citizen of the United States, shall be deemed and taken to be a citizen.' The effect of the act was, to grant the privileges of citizenship to women married to citizens of the United States, without regard to the fact whether the ceremony of marriage had preceded the ceremony of naturalization, in cases where the husband was a naturalized citizen, provided the woman herself 'might lawfully be naturalized under the existing laws.' The existing naturalization acts required no more than that the person claiming its benefits should be a 'free white person, and not an alien enemy.' (Act 14th April, 1802, Stat. at Large, 153; Brightly's Digest, page 33, title Aliens.) Such a person might be lawfully naturalized. The court below held that the intent and object of the act of 1855 was to grant the privileges of citizenship to an alien woman resident or married to a person who at the time of marriage was a citizen of the United States, or at the farthest, to an alien woman residing in the United States, though married to an alien, and who came here with him or followed him here, and in one or the other of these ways identified herself with the country of his adoption.

"This conclusion was reached, not from looking at the act itself, but by traveling out of it. The court, after learnedly considering the previous incomplete legislation of Congress, on the subject of the citizenship of children of American citizens born in a foreign country, jumps at the conclusion that the legislative intent was to make citizens of those aliens' wives whose husbands were citizens at the time of the marriage, and not at the time of the passage of the act; or at most, that wives of persons becoming citizens by naturalization and who resided within the United States, but manifestly where the legislature declares in clear, precise, and unambiguous terms that a woman married to a citizen of the United States, whether native born or naturalized, shall be deemed and taken to be a citizen, courts have no right by judicial construction, to overrule the plain and explicit expressions of the legislative will.

"In Reigna vs. Manning, when the case was in the Exchequer Chamber, it was distinctly held that those naturalization acts are to be construed literally, when they are plainly expressed; we are not to be restrained by exceptions in fact or implied by the Judges. It is not for Courts to say that

a distinct subsequent enactment of this character is unwise or impolitic, and, under color of interpreting the legislative will, substitute something else that they deem wiser than what is written in the Statute Books. But if this were properly to be tolerated, for myself, I could conceive of no ground for excluding from the benefit of the Act of 1855, the women who, at the passage of the act, were the wives of the naturalized citizens, merely because the ceremony of marriage had preceded the ceremony of naturalization. By the correct interpretation of the Act of 1855, then, I think the plaintiff falls within those classes of persons to whom the act granted the privileges of citizenship. It is true that, from some cause, she never resided in this country. But the act does not require that the woman claiming its benefits should have resided within the United States, and, if it did, the residence of the plaintiff was, by construction of law, the same as that of her husband. Story's Conflict of Laws, S. 46, Warrendon vs Warrendon, 9 Bligh, 103, 1047. It is said, furthermore, that she did not, by residence or in any other way, answer the allegiance of the United States, or gave her assent to the citizenship conferred by the act. This however, was not necessary to entitle her to claim its benefits. The privileges of citizenship have often been granted to whole classes of persons, without requiring any act of assent on their part, or subjecting them to the duties of allegiance, or exposing them to the penal consequence of treason, in case they should commit acts of hostility against the Government making the grant. The act of 7 and 8, Victoria, before alluded to, is a notable example.

"The point was raised and pressed with much earnestness by the defendant's counsel, that the plaintiff was not entitled to dower in the lands described in the complaint, it having been purchased by Burton in 1851, and an absolute, unencumbered title having vested in him prior to the passage of the act making his wife a citizen. The objection, in substance is, that a naturalized wife is not entitled to claim dower in lands of her husband acquired previously to her naturalization.

"The ground of the objection is a want of power in Congress to pass any law, the effect of which is to take away or impair vested right of property in the husband. Burton, it is said, was the absolute owner of the land in question before his wife was naturalized; and any act of Congress by which property is taken from one and transferred to another, or by which the property of one is destroyed without compensation

even though it is not transferred to another, it is within the condemnation of that section of the Federal Constitution wqich declares : that no person shall be deprived of life, liberty, or property, without due process of law. (Amendment U. S. Con., Art. 5.) And that to create a contingent right of dower, and attach it to lands of which he is the absolute owner, so as to diminish its vendable value, and limit his power of disposition in respect to it, is a taking of his property in a constitutional sense. The difficulty with this argument is, that the acts of Congress naturalizing the wife, of itself, gives nothing to the wife or takes anything from the husband in the nature of property. It merely removes a personal disability of the wife to take dower by reason of her *alienism*, and in this Burton had no vested right. A right in the wife to take dower was at all times a fundamental feature in the law and civilization of the people amongst whom he and the plaintiff were born and married. He did not depart from the sovereignty of that civilization when he removed to this country and became an inhabitant thereof. (Greenleaf Cruse, Title 6, Chap. 1, Sec. 1, 2, 3, 4, 5 and 6.) Personal disabilities are imposed or removed by the State, as a matter of State policy. And no third person has either a legal interest or a right of the nature of property in their existence or continuance. The effect of their absence or presence on the individual interest of third persons is merely incidental. The creation or preservation of such interest is never an object or a duty of the legislature, in dealing with such disabilities. It is purely a matter of further policy. A married woman may obtain naturalization without the consent of her husband. (Priest vs. Cumings, 16 Wend., 626, S. C. on Error, 20 Wend., 345,) and, in virtue of her naturalization she at once becomes entitled, by act and operation of law, to dower in all the lands acquired by him, and of which he was seized during the coverture, except such as he had previously *aliened*. In other words, as against the husband, the act of naturalization perfects her right in respect to his previously adquired lands."

OWEN et al.
vs.
KELLY et al. } Equity, No. 7.

APPEAL.

The history of this case is briefly as follows:

Miles Kelly, a native of Ireland, emigrated to this country some twenty years ago; settled in the District of Columbia; was naturalized in 1855; acquired property, real and personal; intermarried with Ellen, and died on the 2d of March, 1862, intestate and without issue; but leaving to survive him in the United States the said Ellen, his widow, and his two sisters, Ellen Owen and Margaret Kahoe. His widow, Ellen Kelley, claimed the residue of his estate after the payment of debts, to the exclusion of his sisters, Mrs. Owen and Mrs. Kahoe, who, it is contended, are not entitled to take any portion of the same as his heirs-at-law. Upon a bill of complaint, filed by the complainants below, appellants, the Chancellor decreed in favor of the widow to the exclusion of the sisters. From this decree the appeal was taken. The act of Congress upon which both the widow and the sisters found their claim is the act of February 10, 1855, Section 2, which declares that any "*woman who might lawfully be naturalized under existing laws, married or who shall be married to a citizen of the United States, shall be deemed a citizen.*" This provision is substantially a transcript of the 16th Section of 7 and 8 Victoria, Chap. 66, except that the words "*who might be naturalized under existing laws*" are interpolated in our act, and it is upon the construction of these words that this case depends.

It appears from the evidence that Mrs. Owen and Mrs. Kahoe came into this country from Ireland after they had arrived at the age of eighteen years, which made it necessary in their cases, had they remained single, under the laws existing anterior to the act of 1855, that they should declare their intention to become citizens at least two years prior to their application for admission to citizenship. It also appears that such declaration of intention never was made by either of them prior or subsequent to marriage. It also appears at the time of the passage of the act of 1855 Mrs. Kahoe was the wife of a citizen of the the United States, and that in 1861 Mrs Owen became also the wife of a citizen of the United States. It also appears that the widow, Mrs. Kelly, was, at the time of her coming into this country, under

the age of eighteen years, so that no declaration of intention was necessary to be made in her case in order to entitle her to admission as a citizen had she remained single and after five years residence in this country presented herself for naturalization.

The only difference in the cases of the sisters and of the widow, so far as the right to take from Mrs. Kelly, is that the former came into the United States after they had arrived at eighteen years of age, whilst the widow came here before she had arrived at that age. The decree of the Chancellor, therefore, decides that while the widow, Mrs. Kelly, comes within the meaning of the act of 1855, and is a woman or was a woman who might be lawfully naturalized under the laws existing prior to February 10, 1855, yet the sisters of the deceased, Mrs. Owen and Mrs. Kaboe, were or are women who might not be lawfuly naturalized under the laws existing at that time.

I do not agree in that opinion. I think that the sisters as well as the widow of Miles Kelly were at the time of his decease citizens of the United States by virtue of their intermarriage with citizens.

The language of the act of February 10, 1855, is, "*Any woman who might lawfully be nauralized under the existing laws.*" The word "*lawfully*" may and ought to be eliminated from this clause, it being tautological and superfluous. The expression would then be, "*Any woman who might be naturalized under the existing laws married*" (at the time of the passage of the act) "*or who shall be married*" (after the passage of the act) "*to a citizen of the United States, shall be deemed and taken to be a citizen.*" Now, the word "*might*" is the preterit of the word "*may,*" which according to the best lexicographers simply means "*to be possible,*" and "*might*" is defined by WEBSTER as equivalent to "*had power*" or "*was possible.*" The word "*might*" in the section in controversy has relation to the power or the ability of the woman to become a citizen under the law existing prior to 1855.

Now let us see whether the sisters of the deceased when they were married had not the power or ability to obtain naturalization under the laws existing prior to 1855. Under those pre-existing laws any "*alien being a free white person,*" might (that is to say had the abilility to) *become a citizen of the United States by complying with the conditions prescribed by the law in that behalf.* In the case of the sisters it is true that one more condition was necessary than in the case of the widow, to wit, the declaration of intention two years

previous to application. But might they not have complied with that condition? That is to say, was it not possible for them to have made that declaration?

I have not the least doubt, upon a philological consideration of the claim in controversy, that it was intended to embrace in its purview every woman of *white blood who was then married or should afterwards become married to a citizen of the United States.* It was intended to exclude no woman from citizenship whose husband was a citizen at the time of the passage of the act or should become so after its passage, except women of *color.* The intention of Congress, I have no doubt, in passing the act of 1855 was to conform the law of naturalization to the common law principle of *Barron and feme*, which merged the existence of the wife in that of her husband; and I do not believe that under the operation of that act anything more is necessary to make an alien white woman a citizen than simply that she should intermarry with a citizen of the United States or be the wife of an alien who shall after her marriage become a citizen. I believe the law of 1855 embraces the case of a white woman in Europe who marries there with a citizen of the United States or who marries an alien abroad, if her husband shall come into this country and be naturalized, no matter whether the woman ever lived here or not. I believe so because it is possible for any *white woman* to become naturalized under the laws existing before the passage of the act in question. If the woman be white she may come into this country, may file her declaration, may reside here five years, may prove herself to be a woman of good moral character from the time of her coming here till her application for citizenship, by act. ing in such character may prove herself to be attached to the constitution of the United States, by manifesting such attachment may prove herself well disposed to the good order and happiness of the country, by embracing such disposition and finally may renounce her allegiance to any other dominion which are the conditions required for citizenship.

I know it is agreed that Congress only intended to substitute marriage for the final judicial act of a court of record in the formal admission to citizenship in passing the act of 1855. If such had been the intention it was very easy to have so expressed it. There seems to me to be no sensible reason why such should have been the intention. Why should Congress intend to qualify Mrs. Kelly to take the whole of her husband's estate simply because she came to

this country one day before she was eighteen years old, whilst it would disqualify her from taking a single farthing had she come here the day after she had attained that age. In the absence, therefore, of language clearly expressing such legislation, intention, and in the absence of the least shadow of reason why such intention should have existed, I am constrained to follow the way in which the plain philology of the act of 1855 leads me; and to construe that act to embrace within its comprehensive meaning not only the case of Mrs. Kelly, but also the cases of Mrs. Owen and Mrs. Kahoe, and to make citizens of them all. Under this construction Mrs. Kelly would be entitled to her share of the estate, as widow of Miles Kelly, deceased, and the sisters, Mrs. Owen and Mrs. Kahoe, would be entitled to the residue, as his only heirs-at-law in this country, at the time of the decent being cast.